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The Business Man's Legal Adviser

Volume VI

The National Bankrupcy Act; Automobile Law; Legal Forms

including

Petition in Bankruptcy; Exemptions; Discharge; Debts not Affected by Discharge; Appointment and Duties of Trustees; Preferred Claims; Dividends; Rights of Automobiles on Public Highways; Liability of Chauffeur; Liability of Owner for Chauffeur's Negligence; Duty of Garage Keeper; Duty of Hirer of Automobile; Rights of Purchasers

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BUSINESS MAN'S LEGAL ADVISER

CHAPTER XVII

THE NATIONAL BANKRUPTCY ACT

§ 1. Courts of Bankruptcy and Their Jurisdiction

1. Federal Courts have jurisdiction in bankruptcy proceedings.
2. How proceedings are begun.
3. In what district. Effect of removal.
4. Alien may be a bankrupt.
5. When receiver may be appointed. His powers.

1. "That the courts of bankruptcy as hereinbefore defined, viz., the district courts of the United States in the several States, the supreme court of the District of Columbia, the district courts of the several Territories, and the United States courts in the Indian Territory and the District of Alaska, are hereby made courts of bankruptcy, and are hereby invested, within their respective territorial limits as now established, or as they may be hereafter changed, with such jurisdiction at law and in equity as will enable them to exercise original jurisdiction in bankruptcy proceedings, in vacation in chambers and during their respective terms, as they are now or may be hereafter held, to

(1) adjudge persons bankrupt who have had their principal place of business, resided, or had their domicile within their respective territorial jurisdictions for the preceding six months, or the greater portion thereof, or who do not have their principal place of business, reside, or have their domicile within the United States, but have property within their jurisdictions, or who have been adjudged bankrupts by courts of competent jurisdiction without the United States and have property within their jurisdiction;

(2) allow claims, disallow claims, reconsider allowed or disallowed claims, and allow or disallow them against bankrupt estates;

(3) appoint receivers or the marshals, upon application of parties in interest, in case the courts shall find it absolutely necessary, for the preservation of estates, to take charge of the property of bankrupts after the filing of the petition and until it is dismissed or the trustee is qualified;

(4) arraign, try, and punish bankrupts, officers, and other persons, and the agents, officers, members of the board of directors or trustees, or other similar controlling bodies of corporations for violations of this act, in accordance with the laws of procedure of the United States now in force, or such as may be hereafter enacted, regulating trials for the alleged violation of laws of the United States;

(5) authorise the business of bankrupts to be conducted for limited periods by receivers, the marshals, or trustees, if necessary in the best interests of the estates, and allow such officers additional compensation

for such services, as provided in section forty-eight of this act;

(6) bring in and substitute additional persons or parties in proceedings in bankruptcy when necessary for the complete determination of a matter in controversy;

(7) cause the estates of bankrupts to be collected, reduced to money and distributed, and determine controversies, in relation thereto, except as herein otherwise provided;

(8) close estates, whenever it appears that they have been fully administered, by approving the final accounts and discharging the trustees, and reopen them whenever it appears they were closed before being fully administered;

(9) confirm or reject compositions between debtors and their creditors, and set aside compositions and reinstate the cases;

(10) consider and confirm, modify or overrule, or return, with instructions for further proceedings, records and findings certified to them by referees;

(11) determine all claims of bankrupts to their exemptions;

(12) discharge or refuse to discharge bankrupts and set aside discharges and reinstate the cases;

(13) enforce obedience by bankrupts, officers, and other persons to all lawful orders, by fine or imprisonment or fine and imprisonment;

(14) extradite bankrupts from their respective districts to other districts;

(15) make such orders, issue such process, and enter

such judgments in addition to those specifically provided for as may be necessary for the enforcement of the provisions of this act;

(16) punish persons for contempts committed before referees;

(17) pursuant to the recommendation of creditors, or when they neglect to recommend the appointment of trustees appoint trustees, and upon complaints of creditors, remove trustees for cause upon hearings and after notices to them;

(18) tax costs, whenever they are allowed by law, and render judgments therefor against the unsuccessful party, or the successful party for cause, or in part against each of the parties, and against estates, in proceedings in bankruptcy;

(19) transfer cases to other courts of bankruptcy; and

(20) exercise ancillary jurisdiction over persons or property within their respective territorial limits in aid of a receiver or trustee appointed in any bankruptcy proceedings pending in any other court of bankruptcy.

Nothing in this section contained shall be construed to deprive a court of bankruptcy of any power it would possess were certain specific powers not herein enumerated."[1]

2. The object of the law is to settle the bankrupt's affairs speedily and justly. The proceedings are equitable in their nature. They are begun by filing a petition, after which an order is issued to show cause

[1] Sec. 2 of the Act. The principal sections only of the Act are here given with their interpretation by the courts.

why the prayer of the petition should not be granted. Notice must be served on the persons who are affected by the order of the court and reasonable time must be given to make a defense.

3. The court of bankruptcy has jurisdiction of a petitioner in voluntary bankruptcy who is engaged in trade on his own account as a general merchant in such district, though he resides in another district where he is employed as a clerk in a store. His place of business determines the question.[1] And a district court has jurisdiction of proceedings against a corporation which carries on its business and has its assets entirely within the district, although it was incorporated in another state. And this rule applies to such a corporation notwithstanding a provision in its articles that its principal office shall be within the state of its incorporation.[2]

The law requires six months' residence. This, however, does not mean that the debtor shall have been domiciled, or have had his principal place of business in the district for six months before filing his petition, but only for the greater part of the period.[3]

The removal of a person from one district to another for the express purpose of filing a petition in bankruptcy therein, and with the intention of leaving the district as soon as he has obtained a discharge, does not make him a resident so as to confer jurisdiction on the court.[4]

[1] In re Brice, 93 Fed., 942.
[2] Dressel v. North State Lumber Co., 107 Fed., 255.
[3] Collier on Bankruptcy, p. 18.
[4] In re Garneau, 127 Fed., 677.

4. An alien may be adjudged a bankrupt if he has property within the United States.

5. The court of bankruptcy is given authority to "appoint receivers or the marshals, upon application" of parties in interest, should the court find it absolutely necessary for the preservation of the estate, to take charge of the property of bankrupt after the filing of the petition and until it is dismissed or the trustee is qualified. This includes the bankrupt's property in the possession of a third person.

A receiver who is appointed for a bankrupt before the appointment of a trustee and is given power to proceed forthwith to collect and take possession of all the assets of the bankrupt, is not authorised to bring a suit to collect them outside the jurisdiction of his appointment.[1] Nor has he any authority to seize property forcibly in the possession of an adverse claimant.[2] His compensation rests on the sound discretion of the court.[3]

The appointment of a receiver is a judicial question, and the action of the court cannot be revised by a mandamus proceeding.[4]

§ 2. Acts of Bankruptcy

1. The statute.
2. Concealment of property.
3. Intent to prefer creditor.

[1] In re National Mercantile Agency, 128 Fed., 639.
[2] Bryan v. Bernheimer, 181 N. S., 188.
[3] Collier, p. 21.
[4] Collier, p. 22.

4. Preference through legal proceedings.
5. General assignment.
6. Confession of bankruptcy.

1. "Acts of bankruptcy.— Acts of bankruptcy by a person shall consist of his having (1) conveyed, transferred, concealed, or removed, or permitted to be concealed or removed, any part of his property with intent to hinder, delay, or defraud his creditors, or any of them; or

(2) transferred, while insolvent, any portion of his property to one or more of his creditors with intent to prefer such creditors over his other creditors; or

(3) suffered or permitted, while insolvent, any creditor to obtain a preference through legal proceedings, and not having at least five days before a sale or final disposition of any property affected by such preference vacated or discharged such preference; or

(4) made a general assignment for the benefit of his creditors, or, being insolvent, applied for a receiver or trustee for his property or because of insolvency a receiver or trustee has been put in charge of his property under the laws of a state, of a territory, or of the United States; or

(5) admitted in writing his inability to pay his debts and his willingness to be adjudged a bankrupt on that ground."[1]

2. Next may be considered the various acts of bank-

[1] Sec. 3 of Act.

ruptcy included in the law. The first act consists in having conveyed, transferred, concealed or removed any part of the bankrupt's property with intent to hinder, delay or defraud his creditors. The intent is essential. A person who transfers his property need not be insolvent at the time to constitute this act of bankruptcy; but he must be insolvent at the time the petition against him is filed.

3. The second act is a transfer, while insolvent, of any portion of his property to one or more of his creditors with the intention of preferring them to other creditors. The intent to prefer will be presumed when the transaction consists in a transfer of property as payment, for one "must be presumed to intend the natural result of his own acts." [1]

If, at the time of the transfer, there were no other creditors, of course a subsequent creditor cannot complain. The elements of preference under this section are insolvency, intent to prefer, and a transfer of property. There must be a design to give an advantage. If the transfer is one of a series of efforts to extricate the transferrer from his embarrassment, it will not be a preference; also if the physical transfer is in execution of a valid contract antedating the bankruptcy.[2] Thus a mortgage made by an insolvent and recorded within four months prior to the filing of a petition against him, if given with intent to prefer a creditor, is a preference and act of bankruptcy.[3]

4. The third act consists in suffering or permitting,

[1] Johnson v. Wald, 93 Fed., 640.
[2] Collier, p. 45.
[3] In re Edelman, 130 Fed., 700.

while insolvent, any creditor from obtaining a preference through legal proceedings, and in having, at least five days before a sale, effected this purpose in the disposition of his property. Collier says, that "suffered or permitted" includes passive non-resistance as well as non-ability to resist. A debtor who does not pay a lawful debt when due, and stands by while his creditor secures a judgment against him, and levies upon his property, suffers and permits such judgment to be taken, and such levy to be made, and commits an act of bankruptcy under this clause.[1]

"On the other hand, it has been held not to constitute an act of bankruptcy where a payment is made under the belief that the debtor is solvent, or where, at the time of payment, he had no other creditors, or to make a change of securities, or the payment of unearned premiums on policies of insurance, or an executory agreement by a railway company to transfer certificates of stock to a creditor, or to pay a percentage on claims of a part of his creditors when the others will receive the same percentage, or the return of a piano ordered for a customer who refused to receive it, or the payment of rent to preserve a valuable lease."[2]

5. The fourth act is a general assignment for the benefit of creditors. What is a general assignment? One made under a statute regulating the right thus to do at common law; one made by a majority of the directors and stockholders of a corporation; a con-

[1] P. 48.
[2] Loveland, p. 195.

fession by one of judgment to a trustee for the benefit of all his creditors.[1]

An assignment by a partnership for the benefit of its creditors purporting to transfer all the property of the firm is a general assignment, constituting an act of bankruptcy by the firm, for which the firm may be adjudged a bankrupt, although considered as an assignment by the individual partners, it would be but partial, by reason of not including their separate property.[2]

6. The last act is a confession of bankruptcy. "Three things seem to be necessary to this act: (1) a writing signed by the debtor or some officer or agent duly authorised; (2) a distinct admission therein of his inability to pay his debts; and (3) an unqualified expression of willingness to be adjudged a bankrupt on that ground."[3]

A person is deemed insolvent whenever the aggregate of his property exclusive of any which may be conveyed, concealed, or removed, with an intent to defraud or delay his creditors shall not, at a fair valuation, be sufficient in amount to pay his debts.[4]

In determining whether a person is solvent or insolvent at a particular time the value of his assets should then be taken at a fair valuation, which means their real or market value, and not their face value. It is the price at which his property would sell in the regular course of business.

[1] Collier, p. 49.
[2] In re Meyer, 98 Fed., 976.
[3] Collier, p. 53.
[4] Loveland, p. 186.

§ 3. The Petition

1. Against whom it may be filed.
2. Defense to it.
3. Appearance.
4. When bond is required.
5. When petition must be filed.
6. Examination of bankrupt.

1. "A petition may be filed against a person who is insolvent and has committed an act of bankruptcy within four months after the commission of such act. Such time shall not expire until four months after (1) the date of the recording or registering of the transfer or assignment when the act consists in having made a transfer of any of his property with intent to hinder, delay, or defraud his creditors or for the purpose of giving a preference as hereinbefore provided, or a general assignment for the benefit of his creditors, if by law such recording or registering is required or permitted, or, if it is not, from the date when the beneficiary takes notorious, exclusive, or continuous possession of the property unless the petitioning creditors have received actual notice of such transfer or assignment.

2. It shall be a complete defense to any proceedings in bankruptcy instituted under the first subdivision of this section to allege and prove that the party proceeded against was not insolvent as defined in this act at the time of the filing the petition against him, and

if solvency at such date is proved by the alleged bankrupt the proceedings shall be dismissed, and under said subdivision one the burden of proving solvency shall be on the alleged bankrupt.

3. Whenever a person against whom a petition has been filed as hereinbefore provided under the second and third subdivisions of this section takes issue with and denies the allegation of his insolvency, it shall be his duty to appear in court on the hearing, with his books, papers, and accounts, and submit to an examination, and give testimony as to all matters tending to establish solvency or insolvency, and in case of his failure to so attend and submit to examination the burden of proving his solvency shall rest upon him.

4. Whenever a petition is filed by any person for the purpose of having another adjudged a bankrupt, and an application is made to take charge of and hold the property of the alleged bankrupt, or any part of the same, prior to the adjudication and pending a hearing on the petition, the petitioner or applicant shall file in the same court a bond with at least two good and sufficient sureties who shall reside within the jurisdiction of said court, to be approved by the court or a judge thereof, in such sum as the court shall direct, conditioned for the payment, in case such petition is dismissed, to the respondent, his or her personal representatives, all costs, expenses, and damages occasioned by such seizure, taking, and detention of the property of the alleged bankrupt.

If such petition be dismissed by the court or withdrawn by the petitioner, the respondent or respondents

shall be allowed all costs, counsel fees, expenses, and damages occasioned by such seizure, taking, or detention of such property. Counsel fees, costs, expenses, and damages shall be fixed and allowed by the court, and paid by the obligors in such bond."[1]

5. The petition in involuntary bankruptcy must be filed within four months, after the commission of an act of bankruptcy, which are to be reckoned by excluding the day on which the act of bankruptcy was committed.[2]

6. The bankrupt must appear with his books and papers and submit to an examination of all matters tending to establish his solvency or insolvency. If he submits to exmination and produces his books, and his insolvency does not appear, the burden is on the petitioners to make the proof; but if he fails to appear for examination, or fails to produce his books, the burden is upon him to prove his solvency. "It is not sufficient for an alleged bankrupt when called upon to produce his books to say, 'I don't know where they are.' It is his business to know where they are. He must not only keep proper books of account, but preserve them, and produce them when called upon."[3]

§ 4. Who May Become Bankrupts

1. Who are included.
2. Amount of indebtedness not important.

[1] Sec. 3 a-e of Act.
[2] In re Dupree, 97 Fed., 28.
[3] Bogen v. Protter, 129 Fed., 533.

3. Minors.
4. Lunatics.
5. Farmers.
6. Partnerships.

1. "Any person, except a municipal, railroad, insurance, or banking corporation, shall be entitled to the benefits of this act as a voluntary bankrupt.

Any natural person, except a wage-earner, or a person engaged chiefly in farming or the tillage of the soil, any unincorporated company, and any moneyed, business, or commercial corporation, except a municipal, railroad, insurance, or banking corporation, owing debts to the amount of one thousand dollars or over, may be adjudged an involuntary bankrupt upon default or an impartial trial, and shall be subject to the provisions and entitled to the benefits of this act. The bankruptcy of a corporation shall not release its officers, directors, or stockholders, as such, from any liability under the laws of a state or territory or of the United States."[1]

2. Any person who owes debts, however small in amount, may file a voluntary petition. This term means demands or claims provable in bankruptcy. A debtor owing but one debt and having no assets may be adjudged a voluntary bankrupt.

3. Infants or minors may be entitled to the benefit of the act. Collier says, "It is yet a mooted question, however, whether an infant who has either held himself out and traded as an adult, or who alleges only

[1] Sec. 4, of Act.

debts for necessaries cannot be adjudged bankrupt on his own petition; the better opinion seems to be that he can." If a partner is an infant, the firm and the solvent partner should be declared bankrupts. Again, can an adjudication be granted on a co-partnership composed of an adult and an infant without notice to the latter? "It seems," says Collier, "that no notice is necessary."

4. Lunatics cannot, except in a lucid interval, file a voluntary petition; married women may become bankrupts in all states where they can contract debts. Also aliens having a domicile or place of business within the United States.

5. A person engaged in farming or tilling the soil may become bankrupt. Who is a farmer within the meaning of the act? Judge Bradford has answered: "The chief occupation or business of one, so far as worldly pursuits are concerned, is that which is of principal concern to him, of some permanency in its nature, and on which he chiefly relies for his livelihood or as the means of acquiring wealth, great or small."[1] Collier says that "it has been held that a man engaged both in the business of farming and of raising cattle on a large scale is nevertheless within the law, likewise, perhaps, when his chief occupation is to raise cattle and hogs for the market, though this is hardly farming."

A cattle buyer is not engaged in farming because he takes cattle, purchased by him for the market, to the farm for feeding. One engaged chiefly in farming

[1] In re Mackey, 110 Fed., 355, 358.

is within the exception, although he at the same time conducts a small business as a private banker, or is engaged in carrying on a law and collection business on a small scale, or runs a small store yielding a very small income, compared with that from the farm.[1]

6. Partnerships may become bankrupt. If all the partners petition voluntarily, the proceedings prior to adjudication is identical with an individual petition. The owing of debts, or facts relating to residence, domicile or place of business must appear on the face of the petition to confer jurisdiction. The prayer of the individual must ask for an adjudication of the individuals as well as of a firm. The existence of assets is not material to a partnership adjudication. It may be questioned if a person can, in an individual proceeding, secure a discharge that will be effective against his partnership liability.

The estate of a deceased debtor in this country cannot be adjudged a bankrupt. It follows there can be no partnership adjudication against a firm of which one member is dead.[2]

The rule that whatever a partnership does within the scope of the partnership binds the other partners, applies to commission of acts of bankruptcy. The commission, therefore, of an act of bankruptcy by a partner with respect to his individual property is an act of bankruptcy by the firm. A partnership is not insolvent when its property with that of the individual

[1] P. 66.
[2] Collier, p. 78.

members exceeds in value the indebtedness of the firm and members.[1]

Must separate petitions be filed by the firm and by the individuals? Collier says that "the better opinion is that only one petition need be filed."

If the adjudication is of the firm only, the discharge following will be only of the firm indebtedness, and not of that of the partners as individuals.[2] On the other hand if adjudication is of the partners individually, the discharge will not affect firm liabilities. They thereby become the individual debts of the continuing partner providing the firm was solvent and the transaction was not tainted with fraud. It also arises where each member of the firm has in himself incurred an individual liability by signing his name instead of the firm name. The debt thereby becomes individual only. Generally, however, it is not difficult to distinguish between firm and individual obligations. An individual debt is none the less so because it is entered on the firm books without knowledge of the creditor, and payments have been made by checks on partnership funds.[3]

§ 5. Involuntary Bankruptcy

1. Creditors may petition.
2. Bankrupt's wife may be one.
3. Number of petitioners required.

[1] In re Perley, 138 Fed., 927.
[2] In re Hale, 107 Fed., 432.
[3] Collier, p. 86.

4. How numbers are computed.
5. Employees of debtor are not to be counted.

1. Proceedings in involuntary bankruptcy are instituted by a creditor or creditors filing a petition praying that the debtor may be declared a bankrupt and his property distributed among them. By creditor is meant anyone having a provable claim in bankruptcy against him.

2. The bankrupt's wife may be a petitioning creditor and may file a petition against her husband when there are less than twelve creditors. Firm creditors may join in a petition against an individual member of the firm. To be a petitioning creditor one must own an unliquidated claim against the debtor which may be proved and liquidated under the law. The owner of an unliquidated claim based on a wrong, therefore, cannot be a petitioning creditor. Nor is the owner of a mere contingent liability. But if the debtor's obligation is fixed, though not payable until a future time, the creditor may join in the petition to have the debtor adjudged a bankrupt.

3. A petition in involuntary bankruptcy is regularly filed by three or more creditors who have provable claims against any person (including a corporation, partnership, or a woman) which amount in the aggregate, in excess of the value of securities held by them, if any, to five hundred dollars or over. In case all of the creditors of such person, corporation, or partnership are less than twelve in number, then one of such creditors whose unsecured claim equals five hundred

dollars may file a petition to have him adjudged a bankrupt.

Where there are more than twelve creditors three must join in filing the petition, although most of the twelve are creditors for nominal sums only and are induced not to join in the petition by the solicitation of the bankrupt. This must be honestly done. The courts have refused to sanction a collusive scheme for the purpose of keeping alive the claims of twelve creditors so as to prevent proceedings in involuntary bankruptcy being instituted by one creditor, or splitting up a claim, by assigning part of it, to make a sufficient number of petitioning creditors.

4. In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, only the general or unsecured creditors are counted. Creditors holding claims which are secured or have priority are not counted in computing the number of creditors or the amount of their claims, unless the amount of such claims exceeds the values of such securities or priorities, and then only for such excess. Where a creditor has security or has received a preference he may make a voluntary surrender of it and prosecute a petition on the original debt.

5. Creditors who were employed by the debtor at the time of the filing of the petition, or who are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, are not to be counted. Every generation in lineal consanguinity constitutes

a different degree, reckoning either upwards or downwards. The method of computing the degree of collateral relationship at common law, in the words of Mr. Justice Blackstone, is as follows: "We begin at the common ancestor and run downwards, and in whatever degree the two persons, or the most remote of them, is distant from the common ancestor, that is the degree in which they are related to each other." [1]

§ 6. Exemptions

1 What property of bankrupt is implied.
2. Articles described.

1. "This act shall not affect the allowance to bankrupts of the exemptions which are prescribed by the state laws in force at the time of the filing of the petition in the state wherein they have had their domicile for the six months or the greater portion thereof immediately preceding the filing of the petition." [2]

2. What property is exempt from the operation of the law? A watch may or may not be. It is held to be both wearing apparel, and an implement of trade. Even a diamond stud has been exempted, so are the tools and implements of a bankrupt's trade in most of the states, also his household furniture and wearing apparel to a limited amount. A seat in a stock exchange is not exempt unless so declared by statute. In Vermont an unbroken horse is exempt, but a race

[1] Loveland, pp. 226, 229.
[2] Sec. 6, of Act.

horse is not. A married woman doing business in her own name is not the head of the family and therefore is not entitled to a house-holder's exemption. But homesteads are exempt. He may also have his homestead in a store, but if so, he cannot claim a homestead for the storing of his goods. Crops on a homestead may or may not be exempt, according to circumstances, and likewise insurance policies. The federal law protects pension money from seizure by levy and sale; and some states even protect it after its transformation. All valid liens are preserved by the statute.

§ 7. Bankrupts, Their Duties and Protection

1. Duties.
2. Death or insanity.
3. Protection and detention.
4. Extradition.
5. When bankrupt must attend meetings.
6. Must file schedules.

1. "The bankrupt shall (1) attend the first meeting of his creditors, if directed by the court or a judge thereof to do so, and the hearing upon his application for a discharge, if filed;

(2) comply with all lawful orders of the court;

(3) examine the correctness of all proofs of claims filed against his estate;

(4) execute and deliver such papers as shall be ordered by the court;

(5) execute to his trustee transfers of all his property in foreign countries;

(6) immediately inform his trustee of any attempt, by his creditors or other persons, to evade the provisions of this act, coming to his knowledge;

(7) in case of any person having to his knowledge proved a false claim against his estate, disclose that fact immediately to his trustee;

(8) prepare, make oath to, and file in court within ten days, unless further time is granted, after the adjudication, if an involuntary bankrupt, and with the petition if a voluntary bankrupt, a schedule of his property, showing the amount and kind of property, the location thereof, its money value in detail, and a list of his creditors, showing their residences, if known, if unknown, that fact to be stated, the amounts due each of them, the consideration thereof, the security held by them, if any, and a claim for such exemptions as he may be entitled to, all in triplicate, one copy of each for the clerk, one for the referee, and one for the trustee; and

(9) when present at the first meeting of his creditors, and at such other times as the court shall order, submit to an examination concerning the conducting of his business, the cause of his bankruptcy, his dealings with his creditors and other persons, the amount, kind, and whereabouts of his property, and, in addition, all matters which may affect the administration and settlement of his estate; but no testimony given by him shall be offered in evidence against him in any criminal proceeding.

Provided however, that he shall not be required to attend a meeting of his creditors, or at or for an examination at a place more than one hundred and fifty miles distant from his home or principal place of business, or to examine claims except when presented to him, unless ordered by the court, or a judge thereof, for cause shown, and the bankrupt shall be paid his actual expenses from the estate when examined or required to attend at any place other than the city, town, or village of his residence."[1]

2. The death or insanity of a bankrupt shall not abate the proceedings, but the same shall be conducted and concluded in the same manner, so far as possible as though he had not died or become insane: provided, that in case of death the widow and children shall be entitled to all rights of dower and allowance fixed by the laws of the state of the bankrupt's residence.

3. A bankrupt shall be exempt from arrest upon civil process except in the following cases:

(1) When issued from a court of bankruptcy for contempt or disobedience of its lawful orders;

(2) when issued from a state court having jurisdiction, and served within such state, upon a debt or claim from which his discharge in bankruptcy would not be a release, and in such case he shall be exempt from such arrest when in attendance upon a court of bankruptcy or engaged in the performance of a duty imposed by this act.

The judge may, at any time after the filing of a peti-

[1] Sec. 7, of Act.

tion by or against a person, and before the expiration of one month after the qualification of the trustee, upon satisfactory proof by the affidavits of at least two persons that such bankrupt is about to leave the district in which he resides or has his principal place of business to avoid examination, and that his departure will defeat the proceedings in bankruptcy, issue a warrant to the marshal, directing him to bring such bankrupt forthwith before the court for examination. If upon hearing the evidence of the parties it shall appear to the court or a judge thereof that the allegations are true and that it is necessary, he shall order such marshal to keep such bankrupt in custody not exceeding ten days, but not imprison him, until he shall be examined and released or give bail conditioned for his appearance for examination, from time to time, not exceeding in all ten days, as required by the court, and for his obedience to all lawful orders made in reference thereto.

4. Whenever a warrant for the apprehension of a bankrupt shall have been issued, and he shall have been found within the jurisdiction of a court other than the one issuing the warrant, he may be extradited in the same manner in which persons under indictment are now extradited from one district within which a district court has jurisdiction to another.

5. At the meetings of a bankrupt four things are essential. The bankrupt is not obliged to attend the first or any other meeting of creditors, unless he is ordered to do so. If his home or usual place of business is more than one hundred and fifty miles, from

the place of meeting he cannot be required to attend, save for a definite cause. If ordered to attend a meeting, other than in the place of his residence he is entitled to actual expenses out of the estate, and that none of these limitations seeming to apply to a hearing on discharge, he must attend such a hearing, wherever it is, at his own expense even though ordered not to do so.[1]

6. The bankrupt must file his schedules with a voluntary petition or, if the proceeding be involuntary, within ten days after the adjudication, unless further time is granted. If this is not done by him, it may be done by the creditors or by the referee. By far the most important schedule is that of creditors. Its purpose is to give the court information concerning the persons entitled to notice; to inform the trustees concerning the claims against the estate, and the considerations on which they rest; and to an extent at least to limit the effect of the bankrupt's discharge to parties to the proceeding.

It follows that the requirements of the statute "a list of his creditors, showing their residence if known," etc., should be strictly observed. The names of the creditors should be written with care, and when the creditor is a co-partnership, whose claim has been reduced to judgment, the names, both of the firm and of the individuals, should be set out. Even still greater care should be observed in the matter of addresses.[2]

[1] Collier, p. 113. Quoted with approval in re Shanker, 138 Fed., 862.
[2] Collier, p. 119.

And if the schedules are imperfect the referee should have them amended.[1]

The bankrupt may be examined "at the first meeting of creditors or at such other times as the court shall order." Collier says the creditors may have an examination of the bankrupt at any time while the proceedings are pending. Judge Brown has remarked that "it is not unreasonable to examine the bankrupt concerning the mode of conducting his business, for the purpose of ascertaining whether there has been any such offense committed, or failure to keep books as would furnish a just ground for refusing a discharge.[2]

At the first meeting of creditors, the referee should ask if an examination of the bankrupt is desired, and if so, he should, if the bankrupt is present, order the examination to proceed. If he is absent, a direction through his attorney will usually secure his presence. If unwilling to come, the referee may on his own motion or at the instance of any creditor whose claim has been proved, or the trustee, make an order requiring his attendance for examination, and on failure or refusal to do so, will be reported as a contempt.[3]

§ 8. Suits By and Against Bankrupts

1. When suits must be brought.
2. When time begins to run.
3. Distinction between claims released by discharge and those which are not.

[1] In re Mackey and Co., 1 Am. Bank Reg., 593.
[2] In re Brice, 1 Am. Bank Reg., 419.
[3] Collier, p. 123.

1. "A suit which is founded upon a claim from which a discharge would be a release, and which is pending against a person at the time of the filing of a petition against him, shall be stayed until after an adjudication or the dismissal of the petition; if such person is adjudged a bankrupt, such action may be further stayed until twelve months after the date of such adjudication or, if within that time such person applies for a discharge, then until the question of such discharge is determined.

The court may order the trustee to enter his appearance and defend any pending suit against the bankrupt.

A trustee may, with the approval of the court, be permitted to prosecute as trustee any suit commenced by the bankrupt prior to the adjudication, with like force and effect as though it had been commenced by him.

Suits shall not be brought by or against a trustee of a bankrupt estate subsequent to two years after the estate has been closed." [1]

2. With respect to suits the time does not begin to run until the estate has been closed. The character of the suit is immaterial if it relate to the property of the bankrupt.

3. "This section," says Brandenburg, "makes a distinction between suits upon which claims from which a discharge would be a release and those from which it would not. The logic of this provision is plain. To prosecute to judgment a suit pending against a person at the time the petition is filed is useless, if it is based

[1] Sec. 11, of Act.

upon a claim from which a discharge would be a release, unless necessary to settle disputed questions, establish the plaintiff's right, or, under the direction of the court of bankruptcy, liquidate a provable claim, as under any circumstances each creditor would share equally with the others in the distribution of the estate, and his rights would be fully preserved by proving his claim against the estate. If, however, the bankrupt is not discharged, the suit may then be prosecuted to judgment. The stay must be until after an adjudication, which means the date of the entry of a decree that the defendant in a bankruptcy proceeding is a bankrupt."

§ 9. Compositions

1. When confirmed.
2. When they may be set aside.
3. At what time composition can be made.
4. Composition by partnership.
5. Number of creditors required.
6. Who may object to composition. Secured creditors cannot.
7. Grounds for opposing composition.
8. Compromise is not the same thing.

1. "A bankrupt may offer, either before or after adjudication, terms of composition to his creditors after, but not before, he has been examined in open court or at a meeting of his creditors, and has filed in court the schedule of his property and the list of his creditors

required to be filed by bankrupts. In compositions before adjudication the bankrupt shall file the required schedules, and thereupon the court shall call a meeting of creditors for the allowance of claims, examinations of the bankrupt, and preservation or conduct of estates, at which meeting the judge or referee shall preside; and action upon the petition for adjudication shall be delayed until it shall be determined whether such composition shall be confirmed.

An application for the confirmation of a composition may be filed in the court of bankruptcy after, but not before, it has been accepted in writing by a majority in number of all creditors whose claims have been allowed, which number must represent a majority in amount of such claims, and the consideration to be paid by the bankrupt to his creditors, and the money necessary to pay all debts which have priority and the cost of the proceedings have been deposited in such place as shall be designated by and subject to the order of the judge.

A date and place, with reference to the convenience of the parties in interest, shall be fixed for the hearing upon each application for the confirmation of a composition, and such objections as may be made to its confirmation.

The judge shall confirm a composition if satisfied that (1) it is for the best interests of the creditors; (2) the bankrupt has not been guilty of any of the acts or failed to perform any of the duties which would be a bar to his discharge; and (3) the offer and its acceptance are in good faith and have not been made

or procured except as herein provided, or by any means, promises, or acts herein forbidden.

Upon the confirmation of a composition, the consideration shall be distributed as the judge shall direct, and the case dismissed. Whenever a composition is not confirmed, the estate shall be administered in bankruptcy as herein provided." [1]

2. The judge may, upon the application of parties in interest filed at any time within six months after a composition has been confirmed, set the same aside and reinstate the case if it shall be made to appear upon a trial that fraud was practiced in the procuring of such composition, and that the knowledge thereof has come to the petitioners since the confirmation of such composition.

3. The law provides for effecting compositions among the bankrupt's creditors. But (1) there can be no composition until after adjudication; (2) it cannot be offered until the filing and examination of the bankrupt's schedules and the proposed terms have been accepted in writing by a majority in number and amount of all claims allowed, and the sums to be paid to creditors and the expenses of administration shall have been deposited in court.

Says Judge Brown: "Since section 12 expressly prohibits any offer of compromise until after an examination of the bankrupt in open court, or at a meeting of his creditors when such a meeting is held and the bankrupt's examination is concluded, the object of the special meeting of creditors required by the

[1] Sec. 12, of Act.

former act is presumptively secured; and, accordingly, no special meeting merely to receive an offer of compromise is anywhere required by the present act, but only notice of a hearing, before the judge on the question of confirmation." [1]

No offer can be made after a discharge; for the person offering is no longer a bankrupt. If there has been a reference the offer and its acceptance should be filed with the referee. Such acceptance by the required number of creditors can be tendered immediately after the offer.

4. "In the case of an offer of compromise by a partnership or one of the partners, both the firm and individual debtors may vote. The creditors are required to pass the resolution for a composition by a majority vote in number and amount of the claims allowed. The resolution must be in writing and signed by the creditors, who accept the terms offered, with the amount of each claim proved and allowed.

5. "If not a sufficient number of creditors attend the meeting the bankrupt may circulate the resolution among his creditors who have proved claims, and thus secure a majority in number and amount of the claims which have been allowed. The acceptance to be in writing. It is not necessarily obtained at a meeting of creditors. Creditors who have once accepted a composition offered will not be permitted to withdraw their consent unless fraud or misrepresentation is shown." [2]

[1] In re Hilborn, 104 Fed., 866.
[2] Loveland, pp. 710, 711.

6. General creditors may object to a confirmation of a composition, but secured creditors can not. A trustee is not authorised to interfere in such proceeding beyond furnishing such information concerning the estate under his charge and the administration thereof as may be requested. If the creditors interested in composition proceedings fail to attend to their interest in time, the courts will not relieve them from the consequences of their neglect, except they make a clear case.

"When a creditor desires to oppose the application of a bankrupt for the confirmation of a composition he must enter his appearance in opposition thereto on the day when the creditors are required to show cause, and must file a specification in writing of the grounds of his opposition within ten days thereafter, unless the time shall be enlarged by special order of the judge. The form of the specification in opposition to a confirmation is substantially the same as in opposition to a discharge."[1]

7. There are three grounds for opposing the composition of a bankrupt by his creditors. First, that the composition is not for their best interests; second, that the bankrupt has been guilty of an act or failed to perform some of the duties which would be a bar to his discharge; third, fraud in procuring the composition.

8. A compromise should not be confused with a composition. A compromise is intended to supply a summary and inexpensive way of settling questions

[1] Loveland, p. 715.

arising in the administration of bankruptcy estates. It is mostly used in connection with claims filed against the estate or the contested collections of claims due the estate.

§ 10. Discharge

1. When granted.
2. Object of law.
3. Bankrupt must have acted in good faith.
4. Action of judge in granting it.
5. Grounds for opposing discharge:
   - *a.*— Offenses punishable by imprisonment,
   - *b.*— Intentional concealment of books and records,
   - *c.*— Obtaining property on false credit,
   - *d.*— Intentional concealment of property,
   - *e.*— A discharge since 1903.
6. Who may oppose a discharge.
7. What should be set forth in specifications.
8. Discharge is personal to debtor.
9. Effect of partner's discharge.
10. Within what period discharge must be granted.

1. "Any person may, after the expiration of one month and within the next twelve months subsequent to being adjudged a bankrupt, file an application for a discharge in the court of bankruptcy in which the proceedings are pending; if it shall be made to appear to the judge that the bankrupt was unavoidably prevented from filing it within such time, it may be

filed within but not after the expiration of the next six months.

The judge shall hear the application for a discharge and such proofs and pleas as may be made in opposition thereto by the trustee or other parties of interest, at such time as will give the trustee or parties in interest a reasonable opportunity to be fully heard, and investigate the merits of the application and discharge the applicant unless he has

(1) committed an offense punishable by imprisonment as herein provided; or

(2) with intent to conceal his financial condition, destroyed, concealed, or failed to keep books of account or records from which such condition might be ascertained; or

(3) obtained money or property on credit upon a materially false statement in writing, made by him to any person or his representative for the purpose of obtaining credit from such person; or

(4) at any time subsequent to the first day of the four months immediately preceding the filing of the petition transferred, removed, destroyed, or concealed, or permitted to be removed, destroyed, or concealed, any of his property, with intent to hinder, delay, or defraud his creditors; or

(5) in voluntary proceedings been granted a discharge in bankruptcy within six years; or

(6) in the course of the proceedings in bankruptcy refused to obey any lawful order of, or to answer any material question approved by, the court; provided, that a trustee shall not interpose objections to a

bankrupt's discharge until he shall be authorised so to do at a meeting of creditors called for that purpose.

The confirmation of a composition shall discharge the bankrupt from his debts, other than those agreed to be paid by the terms of the composition and those not affected by a discharge."[1]

2. The main purpose of the bankrupt law is to prevent preferences, and secure a fair and equitable division of the bankrupt's estate among his creditors. This done, the bankrupt is granted a discharge from all his debts. The attainment of the first end is not to be sacrificed in order to accomplish the last. "If he wilfully, and fraudulently conceals any of his property from the trustee, he is not entitled to a discharge. The discharge is not denied as a penalty or a forfeiture because of the offense. The debtor has not performed one of the conditions precedent to obtaining a discharge from his debts. It is not necessary to establish this concealment of assets beyond a reasonable doubt, but by a fair preponderance of credible evidence only. The evidence must be satisfactory."[2]

3. To obtain a discharge the bankrupt must have acted in entire good faith. He must have made the fullest disclosure of his assets, and when he knowingly and designedly omits assets from his schedule, although the amount is small, he will be held to have done so with the intent of defrauding his creditors, and a discharge will be denied to him notwithstanding his claim

[1] Sec. 14, of Act.
[2] In re Leslie, 119 Fed., 406, 410.

that he acted under the advice of counsel.[1] Said Judge Wallace in deciding one of the cases: "The testimony of the bankrupt throughout his examination at the first meeting of the creditors was so evasive and disingenuous as to discredit his truthfulness, but his discharge cannot be defeated upon such a consideration. It is incumbent upon the opposing creditor to establish satisfactorily that the particular statements of which perjury is predicated were false; they cannot be found to be false upon mere conjecture." [2]

4. In granting a discharge if no appearance is entered and the statutory facts relating to time, publication and mailing appear, a discharge follows. The judge rarely investigates further. The bankrupt should be ordered to attend on the hearing if the creditors request. Where objections are interposed to the discharge and the case is heard and the discharge refused on facts found by a referee, to whose findings no objections have been filed, the proceedings are conclusive. The case, therefore, will not be reopened and another reference made for a second hearing.[3]

The question of discharge is addressed to the sound judicial discretion of the judge. If he sustains specifications, or any of them, an order refusing the discharge is granted and entered. Such an order precludes another application, in the same proceeding. If he overrules them, an order of discharge follows. A discharge may not be refused because the bankrupt has

[1] In re Breitling, 133 Fed., 146.
[2] In re Gaylord, 112 Fed., 669.
[3] In re Royal, 113 Fed., 140.

been dilatory in bringing the matter to a hearing. The insanity of the bankrupt does not affect his right to a discharge.

5 (*a*) One of the most important grounds for opposing a discharge is an offence under the statute punishable by imprisonment. What are these offences? "When a person has knowingly and fraudulently, (1) concealed, while a bankrupt, from his trustee any of the property belonging to his estate in bankruptcy; or, (2) made a false oath or account in, or in relation to, any proceeding in bankruptcy; or (3) presented under oath any false claim for proof against the estate of a bankrupt, or used any such claim in composition, personally or by agent, proxy, or attorney, or as agent, proxy, or attorney; or, (4) received any material amount of property from a bankrupt after the filing of the petition with intent to defeat the act; or (5) extorted or attempted to extort any money or property from any person as a consideration for acting or forbearing to act in bankruptcy proceedings."[1]

(*b*) Another ground for opposing a discharge is the intentional concealment, destruction, or failure of a bankrupt to keep his books of account or records from which his true condition might be ascertained. To conceal includes to secrete, falsify, and mutilate. A bankrupt's failure to preserve books of account of his business from which he had retired many years before, will not defeat his discharge. Again, if the books are kept so irregularly that the bankrupt's

[1] Loveland, p. 802.

financial condition cannot be determined by them, he has failed to comply with the law.

The statute itself indicates what constitutes the offence. Conceal includes secrete, falsify, and mutilate. Any act or series of acts with relation to business records which may reasonably be held to be within the meaning of "destruction, concealment, secreting, falsifying, mutilation, or failure to keep within the law. A discharge in bankruptcy is a great privilege and demands that reasonable care at least shall be taken in advance by one who asks for it, and a bankrupt who was a man of business experience, who failed to keep any books whatever from which his financial condition could be ascertained must be presumed to conceal his condition." [1]

When a bankrupt is an employer and not engaged in any business of his own, his failure to keep books showing his financial condition does not indicate a fraudulent intent which justifies the refusal of his discharge.[2] An omission to make entries of payments to relations requires explanation. When books are kept in a suspicious manner a discharge should be refused. The destruction of vouchers or other business papers might be fatal as would be the destruction of books. On one occasion a bankrupt inherited a large amount of stocks from his father which he sold and spent the money in gambling within three years preceding his bankruptcy.[3] The destruction of his

[1] In re Olvord, 135 Fed., 236.
[2] In re McCrea, 161 Fed., 246.
[3] Collier, 283.

bank book within a year prior to his bankruptcy, unexplained, justified an inference that it was with fraudulent intent to conceal his true financial condition and was sufficient ground for refusing his discharge.[1]

(*c*) Another ground for opposing the bankrupt's discharge is his obtaining property on credit from any person on a materially false statement in writing of his financial condition. The creditor who alleges this objection must prove that the bankrupt obtained property on credit; that he did so on a statement of his financial condition, on which the creditor relied, that the statement was in writing, was materially false, and made so for the purpose of obtaining such property from the creditor. To this should be added the usual elements, that the obtaining of the property must have been by the bankrupt, or by someone duly authorised by him. "The effect of this new objection must be," Collier says, "that every tradesman whose credit is not unquestioned, will be asked to give a mercantile statement, as a condition, precedent to dealing, it may be suggested a new statement with every new transaction."

(*d*) A fourth ground for opposing a bankrupt's discharge is the destruction, concealment or removal of any of his property "with the intent to hinder, delay or defraud his creditors." The quoted words mean for the purpose of defrauding the entire body of creditors.

He cannot decide for himself whether a specific piece of property may be retained or omitted from his schedule. It is his duty to disclose the property

[1] In re Studebaker, 124 Fed., 945.

and permit the court to determine whether it should go to his creditors. The portion of the monthly salary of a public officer of a state which was earned, but not payable at the time of his filing a petition in bankruptcy, does not pass to his trustee, and his failure to schedule it is therefore not a concealment of property which defeats his right to a discharge.[1]

The question often arises when property has been given or transferred by a bankrupt to his wife. An omission of assets from the schedule on the advice of counsel honestly given is at least a presumptive excuse. But when he makes a voluntary transfer of his property, without consideration, to his wife, for the purpose of defrauding his creditors and placing the property beyond their reach, and continues always in its full use and enjoyment and does not disclose the true facts regarding it in his schedule in bankruptcy, or surrender it to his trustee, he is guilty of having concealed, while a bankrupt, from his trustee, property belonging to his estate in bankruptcy and thus forfeiting his right to a discharge, although the fraudulent transfer was made long before the passing of the bankruptcy act, for the concealment was continuous and extended beyond the date of the adjudication in bankruptcy.[2]

A wilful and fraudulent concealment of assets by a bankrupt need only be shown by a fair preponderance of credible evidence. If the testimony is that of the bankrupt alone, and the most that can be said is that

[1] In re Doherty, 135 Fed., 432.
[2] In re Quackenbush, 102 Fed., 282.

the circumstances are suspicious, the objection to a discharge should be overruled. When objecting creditors have made a case, the burden of proof is on the bankrupt to so weaken it by credible evidence as to present a question of fact. If it appear that the bankrupt did not act in good faith in withholding a part of his property from his creditors, the court will not countenance it by permitting his discharge.

A concealment accomplished before the bankruptcy is not within the penalty of the statute. Such a concealment once begun, necessarily continues after the bankruptcy.

A bankrupt who has been refused a discharge because of a fraudulent concealment of assets from the trustee may not, a few months thereafter, file a new petition alleging the same facts and prosecute a new application for a discharge.[1]

(*e*) Another ground for opposing a bankrupt's discharge is a discharge in proceedings begun since February 5, 1903, "when, in voluntary proceedings he has been granted a discharge in bankruptcy within six years." And lastly, he will not be granted a discharge in proceedings begun since February 5, 1903, when during these he has refused to obey any lawful order or answer any material question approved by the court.

6. An application for a discharge may be opposed by any party having a pecuniary interest, which must be satisfactorily shown. "A person has been held to have an interest sufficient to entitle him to oppose

[1] In re Fiegenbaum, 121 Fed., 69.

a discharge whose claim was contingent and unliquidated; or who held an equitable claim only against the estate, or whose claim was contested, or not provable." The reason that such persons are parties in interest is that if a discharge is granted, the bankrupt may plead it in bar of their claims if asserted later. A creditor whose only debt is one not released by discharge, or whose debt is barred by the statute of limitations, or who has been paid in full, has no such interest and therefore cannot oppose the discharge.[1]

7. The specifications of objection should set out the false representation, and the name of the person alleged to have been defrauded. It has been held that this objection to a discharge may be pleaded by any creditor.

8. A discharge is personal to the debtor. It follows, therefore, that a lien in good faith is not affected. This doctrine should not be confused with the other, which sets aside all liens through legal proceedings, if within four months of the bankruptcy. Liens continuing valid, it often becomes necessary to destroy their effect on possible after-acquired property; hence, the provisions in the state laws, permitting proceedings to compel the cancellation of docketed documents bar by a discharge.

9. A discharge of two general partners in bankruptcy cannot be set up in favour of a special partner in an action against the three as general partners on the

[1] Loveland, p. 792. Granting of a discharge to the bankrupt whose estate he is administering, also the executor or administrator of a deceased creditor may oppose the bankrupt's discharge.

ground that the special partner has made himself liable as a general partner.[1]

10. The discharge must be within one year, which begins to run from the date of the order of discharge. While an application for revocation can be made after the year has elapsed, application to the court to vary or annul the order may be made after that time, though a court will properly refuse such an application when made plainly for the purpose of avoiding this limitation. If the bankrupt was unavoidably prevented from filing his petition within the year it may be filed within the next six months.

A court of bankruptcy is without jurisdiction to set aside a discharge to reinstate a case and to permit an addition of a creditor to the bankrupt's schedule more than a year after the adjudication in bankruptcy without notice to the creditor.[2]

§ 11. Revocation of Discharge

1. When discharge may be revoked.
2. Within what period.
3. Who must make application.
4. Grounds for revoking.

1. "The judge may, upon the application of parties in interest who have not been guilty of undue laches, filed at any time within one year after a discharge shall have been granted, revoke it upon a trial if it shall be

[1] Abendroth v. Van Dolsen, 131 U. S., 66.
[2] In re Hawk, 114 Fed., 916.

made to appear that it was obtained through the fraud of the bankrupt, and that the knowledge of the fraud has come to the petitioners since the granting of the discharge, and that the actual facts did not warrant the discharge."[1]

2. A discharge cannot be collaterally attacked. Once granted it cannot be revoked only in the manner prescribed by law. It may be revoked within a year after it has been granted if the fact is shown that it was obtained through fraud and that the knowledge of it has come to the petitioners since the granting of the discharge.

3. The application must be made by a party in interest. A creditor whose name has been omitted from the schedule and who has had no notice or knowledge of the bankruptcy proceedings, or who has no provable claim, has not the required interest to justify proceedings to vacate the discharge. The application must be filed within a year after the granting of the discharge, and addressed to the judge and filed in the clerk's office, and not with the referee. As the bankrupt's fraud is the sole ground for revoking the discharge, the creditor has the right to have the discharge set aside when such fraud was used in obtaining it as would have prevented this if known at the time it was granted. The fraud must be actual as distinguished from constructive or legal fraud.

4. "A discharge," says Loveland, "will not be vacated unless the court is satisfied that the creditor

[1] Sec. 15, of Act.

or his representatives had no knowledge of the objections at the time the discharge was granted. Where an attorney has knowledge of objections it will be presumed that his client knows the same facts.

"If the court finds that the fraudulent acts alleged are not proved, or that they were known to the creditors before the granting of the discharge, the judgment should be rendered in favour of the bankrupt. In such a case the validity of his discharge is not affected by the proceedings. If the court finds that the fraudulent acts, or any of them, alleged by the creditor in his petition are proved, and that the creditor had no knowledge of the same until after the granting of the discharge, and that the actual facts would not warrant the discharge, the judgment should be given in favour of the creditor and the discharge of the bankrupt should be annulled." [1]

§ 12. Discharge of Co-debtors

1. "The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt shall not be altered by the discharge of such bankrupt." [2]

2. The discharge of the maker of a note does not affect in any way the indorser. The holder may proceed to collect the entire debt of him. Says Brandenburg: "The liability of a person who is a co-debtor with, or guarantor or in any manner a surety for, a bankrupt will not be altered by the discharge, whether as

1 Loveland, p. 865.
2 Sec. 16, of Act.

partner, joint contractor, indorser, surety or otherwise; nor will a discharge release a bankrupt from liability as surety where no cause of action arose until after such discharge; nor as surety for the faithful performance of a duty as a public officer; but where a surety on a guardian's bond receives a discharge in bankruptcy, he is released from liability for defaults of the guardian prior to his bankruptcy."[1]

§ 13. Debts not Affected by Discharge

1. What debts are not affected by discharge.
2. Only provable debts are discharged.
3. Taxes.
4. Fiduciary debts.
5. Revival of debt by new promise.
6. Directors are not discharged from personal liability.

1. "A discharge in bankruptcy shall release a bankrupt from all of his provable debts, except such as

(1) are due as a tax levied by the United States, the state, county, district, or municipality in which he resides;

(2) are liabilities for obtaining property by false pretenses or false representations, or for wilful and malicious injuries to the person or property of another, or for alimony due or to become due, or for maintenance or support of wife or child, or for seduction of an unmarried female, or for criminal conversion;

[1] P. 288.

(3) have not been duly scheduled in time for proof and allowance, with the name of the creditor if known to the bankrupt, unless such creditor had notice or actual knowledge of the proceedings in bankruptcy; or

(4) were created by his fraud, embezzlement, misappropriation, or defalcation while acting as an officer or in any fiduciary capacity." [1]

2. Only provable debts are discharged. Thus even a debt scheduled in bankruptcy, under the former law, but kept alive by a subsequent judgment is released.[2] Since provable debts are discharged, none dating after the petition in bankruptcy are affected by the discharge.

3. Taxes are not excepted from the general rule of provable debts, including local assessments, even if the statute were silent. Manifestly the words "fiduciary debts," means the fraud of officers or of persons in a fiduciary capacity, and not the ordinary fraud, of an ordinary debtor, in so disposing of his property as to hinder, delay or defraud his creditors.

4. Manifestly only public officers and trustees are fiduciary creditors, and not agents, factors, commissionmen and the like. "The term 'officer' probably means," so Collier says, "any public official, who from the nature of his duties, may be guilty of embezzlement, misappropriation, or defalcation in office, and it is thought the word 'misappropriation' means little more than its companion word 'embezzlement.' The term fraud in any fiduciary capacity clearly refers

[1] Sec. 17, of Act.
[2] P. 230.

to wrongs committed by private trustees, as attorneys, executors, guardians and trustees in general. It is well settled that the sureties on the bonds of such trustees are not bound to a fiduciary obligation, and a discharge of the surety will be an available bar."

The discharge, therefore, does not release a bankrupt from debts created by his fraud, embezzlement, or defalcation while acting as an officer in any fiduciary capacity. But a balance due on the subscription to capital stock of a corporation is not a debt possessing a fiduciary character. Nor does a discharge release a debt due by a testamentary trustee, executor, administrator or guardian. But an attorney in collecting money for his client acts in a fiduciary capacity and is not released by his discharge from his obligation.

"A discharge in bankruptcy," says Loveland, "does not release a bankrupt from a debt which was created by his defalcation while acting as an officer. Precisely who are included in the term 'officer' can not be stated. It manifestly includes all public officers. A collector of city taxes is such an officer and a debt due from him to the municipal corporation for taxes received and not accounted for is not discharged. So where a retiring township trustee gives his note to his successor in satisfaction of a debt due the township for funds wrongfully appropriated to his own use, it was held that the debt was not so changed thereby as to be released by a discharge. The mere negligence of a public officer in collecting moneys, which it is his duty to collect, has been held not to be defalcation." [1]

[1] Loveland, p. 848.

5. A debt discharged is not a debt paid. The moral obligation remains. Whether oral or in writing, it must be definite, expressed, distinct and unambiguous. It would not be sufficient to make an additional offer of payment, which was not accepted by the creditor.

6. Directors are sureties in a qualified sense only. They are within the intendment of the law, and are not released by the discharge of their corporation from any liability to its creditors.

"The secondary liability of directors and stockholders in certain cases, within certain limits, and for certain classes of debts, is abundantly established as a general principle of statutory corporate law in the United States. Suddenly to abolish this secondary liability under the pretense of enacting a bankrupt law, to deprive certain classes of creditors of what often is a most valuable means, and is sometimes the only means, of collecting debts due them by the corporation, would be an act of monstrous injustice, even if it were held to be within the constitutional power of Congress."[1]

§ 14. Referees

1. Office of referee.
2. Appointment and removal.
3. Qualification.
4. Oath.
5. Number.
6. Jurisdiction.

[1] In re Marshall Paper Co., 95 Fed., 419.

7. Duties.
8. In what cases he can act.
9. Meetings.
10. Removal.

1. " The offices of referee and trustee are thereby created."[1]

2. "Courts of bankruptcy shall, within the territorial limits of which they respectively have jurisdiction,

(1) appoint referees, each for a term or two years, and may, in their discretion, remove them because their services are not needed or for other cause; and

(2) designate, and from time to time change, the limits of the districts of referees, so that each county, where the services of a referee are needed, may constitute at least one district." [2]

3. "Individuals shall not be eligible to appointment as referees unless they are, respectively,

(1) competent to perform the duties of that office;

(2) not holding any office of profit or emolument under the laws of the United States or of any state other than commissioners of deeds, justices of the peace, masters in chancery, or notaries public;

(3) not related by consanguinity or affinity, within the third degree as determined by the common law, to any of the judges of the courts of bankruptcy or circuit courts of the United States, or of the justices or judges of the appellate courts of the districts wherein they may be appointed; and

[1] Sec. 33, of Act.
[2] Sec. 34, of Act.

(4) residents of, or have their offices in, the territorial districts for which they are to be appointed."[1]

4. "Referees shall take the same oath of office as that prescribed for judges of United States courts."[2]

5. Such number of referees shall be appointed as may be necessary to assist in expeditiously transacting the bankruptcy business pending in the various courts of bankruptcy."[3]

6. "Referees respectively are hereby invested, subject always to a review by the judge, within the limits of their districts as established from time to time, with jurisdiction to

(1) consider all petitions referred to them by the clerks and make the adjudications or dismiss the petitions;

(2) exercise the powers vested in courts of bankruptcy for the administering of oaths to and the examination of persons as witnesses and for requiring the production of documents in proceedings before them, except the power of commitment;

(3) exercise the powers of the judge for the taking possession and releasing of the property of the bankrupt in the event of the issuance by the clerk of a certificate showing the absence of a judge from the judicial district, or the division of the district, or his sickness, or inability to act;

(4) perform such part of the duties, except as to

[1] Sec. 35, of Act.
[2] Sec. 36, of Act.
[3] Sec. 37, of Act.

questions arising out of the applications of bankrupts for compositions or discharges, as are by this act conferred on courts of bankruptcy and as shall be prescribed by rules or orders of the courts of bankruptcy of their respective districts, except as herein otherwise provided; and

(5) upon the application of the trustee during the examination of the bankrupts, or other proceedings, authorise the employment of stenographers at the expense of the estates at a compensation not to exceed ten cents per folio for reporting and transcribing the proceedings."[1]

7. "Referees shall (1) declare dividends and prepare and deliver to trustees dividend sheets showing the dividends declared and to whom payable;

(2) examine all schedules of property and lists of creditors filed by bankrupts and cause such as are incomplete or defective to be amended;

(3) furnish such information concerning the estates in process of administration before them as may be requested by the parties in interest;

(4) give notices to creditors as herein provided;

(5) make up records embodying the evidence, or the substance thereof, as agreed upon by the parties in all contested matters arising before them, whenever requested to do so by either of the parties thereto, together with their findings therein, and transmit them to the judges;

(6) prepare and file the schedules of property and lists of creditors required to be filed by the bankrupts,

[1] Sec. 38, of Act.

or cause the same to be done, when the bankrupts fail, refuse, or neglect to do so;

(7) safely keep, perfect, and transmit to the clerks the records, herein required to be kept by them, when the cases are concluded;

(8) transmit to the clerks such papers as may be on file before them whenever the same are needed in any proceedings in courts, and in like manner secure the return of such papers after they have been used, or if it be impracticable to transmit the original papers, transmit certified copies thereof by mail;

(9) upon application of any party in interest, preserve the evidence taken or the substance thereof as agreed upon by the parties before them when a stenographer is not in attendance; and

(10) whenever their respective offices are in the same cities or towns where the courts of bankruptcy convene, call upon and receive from the clerks all papers filed in courts of bankruptcy which have been referred to them.

Referees shall not (1) act in cases in which they are directly or indirectly interested;

(2) practice as attorneys and counselors at law in any bankruptcy proceedings; or

(3) purchase directly or indirectly, any property of an estate in bankruptcy."[1]

8. A referee duly appointed can act in all cases. What amounts to disqualification must be determined in each case. Relationship by blood, or affinity even though remote, is usually enough. But owing a debt

[1] Sec. 39, of Act.

to the bankrupt, or perhaps being a scheduled creditor, at least in a no-asset case, does not disqualify. A prior relation of the attorney to the debtor, likewise, does not. If disqualified, a referee should immediately file his certificate to that effect, stating the reasons for his disqualification with the clerk; and then the case will be referred to another referee. Sometimes the disqualification does not appear until the case is far advanced and then the matter may be considered by the judge, or he may refer the matter specially to another referee.

9. On receipt from the clerk of the order of reference, the referee calls a first meeting, setting the time "not less than ten nor more than thirty days after the adjudication," and the place "at the county seat of the county in which the bankrupt has had his principal place of business, resided, or has his domicile."

The practice of keeping first meetings alive by successive continuance is general, and to be recommended, as it saves delay and expense in calling creditors together to consider special matters.

The referee, or if there has been no reference, the judge, must preside at all first meetings.

10. The office of referee is created by statute. He is an officer of the court of bankruptcy, and is appointed within its territorial jurisdiction by the judge. The number rests in his discretion, who hold office for two years. "They are, however, at all times subject to removal by the judge, because their services are not needed, or for other cause. Whenever the office of a referee is vacant, or its occupant is absent or dis-

qualified to act, the judge may act or may appoint another referee, or another referee holding an appointment under the same court may, by the order of the judge, temporarily fill the vacancy." [1]

§ 15. Compensation of Referees

1. "Referees shall receive as full compensation for their services, payable after they are rendered, a fee of fifteen dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and twenty-five cents for every proof of claim filed for allowance, to be paid from the estate, if any, as a part of the cost of administration, and from estates which have been administered before them one per centum commissions on all moneys disbursed to creditors by the trustee, or one-half of one per centum on the amount to be paid to creditors upon the confirmation of a composition.

Whenever a case is transferred from one referee to another the judge shall determine the proportion in which the fee and commissions therefor shall be divided between the referees.

In the event of the reference of a case being revoked before it is concluded, and when the case is specially referred, the judge shall determine what part of the fee and commissions shall be paid to the referee." [2]

[1] Loveland, p. 128.
[2] Sec. 40, of Act.

In compositions the referee receives one half of one per cent on the amount to be paid the creditors. This standard of compensation has not been modified by the recent act. Whether creditors include priority claims is perhaps debatable. The filing fee is fifteen dollars, and is paid to the clerk at the time his petition is filed. The clerk pays it to the referee within ten days after the case is closed. The word closed has been liberally construed in some districts and the filing fee has been paid the referee at the end of one or two months, even if the case is not technically at an end.

With respect to commissions on disbursements to creditors there is no change in the rate, which is still one per cent, but the percentage is now on "all moneys disbursed to creditors by the trustee."

§ 16. Trustees

1. Appointed by creditors.
2. Qualifications.
3. Appointment by majority in number and amount required.

1. "The creditors of a bankrupt estate shall, at their first meeting after adjudication or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, or if there is a vacancy in the office of trustee, appoint one trustee or three trustees of such estate. If the creditors do not ap-

point a trustee or trustees as herein provided, the court shall do so." [1]

2. Trustees may be (1) individuals who are respectively competent to perform the duties of that office and reside or have an office in the judicial district within which they are appointed, or (2) corporations authorised by their charters or by law to act in such capacity and having an office in the judicial district within which they are appointed.

3. The present law goes further than any other ever enacted in the way of giving creditors the right to choose trustees. The statute does not give the judge or referee the right to oppose or disapprove. This is an unqualified right vested in the creditors. They must appoint him at their first meeting.

If a majority in number and amount do not appoint, or if the creditors neglect to recommend the appointment, then the judge or referee can appoint. If at the first meeting all claims offered for proof are in dispute, which cannot be settled, the referee possesses discretionary power to appoint a trustee. "The meaning of this clause," says Judge Wallace, "is to vest the power of creditors in those who are present, and not allow the proceedings to be delayed by the absence of those creditors who do not take sufficient interest to participate." [2]

Priority creditors are excluded and secured claims will be counted only to the amount unsecured. An assignee of a large number of claims should be counted

[1] Sec. 44, of Act.
[2] In re Henschel, 113 Fed., 443, 444.

as one creditor only.[1] Mortgagees whose debts are dependent solely upon the contingency of a deficiency arising upon foreclosure are neither necessary nor proper parties between the bankrupt and his creditors.

The present law gives the choice of the trustee of a bankrupt co-partnerhsip to its creditors. He must keep separate accounts of each estate. This follows from the very nature of his duties and the expenses of administration are apportioned to the individual and partnership estates by the court.

A referee cannot ignore the appointment of a trustee by creditors and proceed summarily to make an appointment without holding another election. He cannot compel the creditors to vote, but he can give them an opportunity. If they do not vote they have neglected to appoint or recommend. If he disapproves of the appointment it is his duty to make an order in writing to that effect, and the parties interested may apply to a district judge, who may remove the trustee appointed by the creditors, and order another appointment by them.

§ 17. Death or Removal of Trustee

1. Suits do not end on death or removal of trustee.
2. Meeting should be called to fill vacancy.
3. Who can remove.
4. Effect of removal on suits.

1. "The death or removal of a trustee shall not

[1] In re Messingill, 113 Fed., 366.

abate any suit or proceeding which he is prosecuting or defending at the time of his death or removal, but the same may be proceeded with or defended by his joint trustee or successor in the same manner as though the same had been commenced or was being defended by such joint trustee alone or by such successor." [1]

2. If one of three trustees dies, a meeting should be called to fill the vacancy. At such a meeting, the creditors may vote to continue the survivor, or elect him as a single trustee.

3. Creditors, however, have no control over the removal of trustees other than to initiate proceedings to that end. The former law gave them such control with the consent of the court. Now the sole power to remove is given to the judge, not a referee. A trustee can unquestionably resign, nevertheless his resignation may be ineffectual, unless the judge consents, or the referee.

4. The statute applies to all suits or proceedings, no matter how the trustee's removal is caused. In that case the court could doubtless order a resigning trustee to continue such a suit, notwithstanding the death or removal of a trustee.

§ 18. Duties of Trustees

1. Duties described.
2. Is an officer of the court.

1. "Trustees shall respectively (1) account for and

[1] Sec. 46, of Act.

pay over to the estates under their control all interest received by them upon property of such estate;

(2) collect and reduce to money the property of the estates for which they are trustees, under the direction of the court, and close up the estate as expeditiously as is compatible with the best interests of the parties in interest; and such trustees, as to all property in the custody or coming into the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a creditor holding a lien by legal or equitable proceedings thereon; and also, as to all property not in the custody of the bankruptcy court, shall be deemed vested with all the rights, remedies, and powers of a judgment creditor holding an execution duly returned unsatisfied;

(3) deposit all money received by them in one of the designated depositories;

(4) disburse money only by check or draft on the depositories in which it has been deposited;

(5) furnish such information concerning the estates of which they are trustees and their administration as may be requested by parties in interest;

(6) keep regular accounts showing all amounts received and from what sources and all amounts expended and on what accounts;

(7) lay before the final meeting of the creditors detailed statements of the administration of the estates;

(8) make final reports and file final accounts with the courts fifteen days before the days fixed for the final meetings of the creditors;

(9) pay dividends within ten days after they are declared by the referees;

(10) report to the courts, in writing, the condition of the estates and the amounts of money on hand, and such other details as may be required by the courts, within the first month after their appointment and every two months thereafter, unless otherwise ordered by the courts; and

(11) set apart the bankrupt's exemptions and report the items and estimated value thereof to the court as soon as practicable after their appointment.

Whenever three trustees have been appointed for an estate, the concurrence of at least two of them shall be necessary to the validity of their every act concerning the administration of the estate.

The trustee shall, within thirty days after the adjudication, file a certified copy of the decree of adjudication in the office where conveyances of real estate are recorded in every county where the bankrupt owns real estate not exempt from execution, and pay the fee for such filing, and he shall receive a compensation of fifty cents for each copy so filed, which, together with the filing fee, shall be paid out of the estate of the bankrupt as a part of the cost and disbursements of the proceedings."[1]

2. The trustee is an officer of the court. The collection of assets is his first duty. He must proceed to collect and reduce to money all the property under its direction, and close up the estate as soon as this can be done with due regard for the best interests of the

[1] Sec. 47, of Act.

party. This he may do by collecting accounts, even by suit, or by selling goods or lands, or proceeding to set aside the transfer or preferential liens. As a rule, save in the common and simpler steps of administration, he should consult the wishes of the creditors.

In many matters the law requires him to do this; the creditors usually decide. First meetings should be kept alive for this purpose. The referee in charge may, in extreme cases, disapprove. Such action is, however, not usual.

§ 19. Compensation of Trustees, Receivers and Marshals

1. Trustees.
2. Receivers or marshals.
3. How commissions are to be computed.
4. Commission of trustee in a composition.
5. Commission if more than one trustee.
6. Commission in case of resignation.

1. "Trustees shall receive for their services, payable after they are rendered, a fee of five dollars deposited with the clerk at the time the petition is filed in each case, except when a fee is not required from a voluntary bankrupt, and such commissions on all moneys disbursed or turned over to any person, including lien holders, by them, as may be allowed by the courts, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess

of five hundred dollars and less than fifteen hundred dollars, two per centum on moneys in excess of fifteen hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars. And in case of the confirmation of a composition after the trustee has qualified the court may allow him, as compensation, not to exceed one-half of one per centum of the amount to be paid the creditors on such compensation.

"In the event of an estate being administered by three trustees instead of one trustee or by successive trustees, the court shall apportion the fees and commissions between them according to the services actually rendered, so that there shall not be paid to trustees for the administering of any estate a greater amount than one trustee would be entitled to.

"The court may, in its discretion, withhold all compensation from any trustee who has been removed for cause.

2. "Receivers or marshals appointed pursuant to section two, subdivision three, of this act shall receive for their services, payable after they are rendered, compensation by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and also upon the moneys turned over by them or afterwards realised by the trustees from property turned over in kind by them to the trustees, as the court may allow, not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per

centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars and one per centum on moneys in excess of ten thousand dollars:

"Provided, that in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such compositions: Provided further, That when the receiver or marshal acts as a mere custodian and does not carry on the business of the bankrupt as provided in clause five of section two of this act, he shall not receive nor be allowed in any form or guise more than two per centum on the first thousand dollars or less, and one-half of one per centum on all above one thousand dollars on moneys disbursed by him or turned over by him to the trustee and on moneys subsequently realised from property turned over by him in kind to the trustee: Provided further, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this act. [1]

"Where the business is conducted by trustees, marshals, or receivers, as provided in clause five of section two of this act, the court may allow such officers additional compensation for such services by way of commissions upon the moneys disbursed or turned over to any person, including lien holders, by them, and, in cases of receivers or marshals, also upon the moneys turned over by them or afterwards realised by the

[1] Sec. 48, of Act.

trustees from property turned over in kind by them to the trustees; such commissions not to exceed six per centum on the first five hundred dollars or less, four per centum on moneys in excess of five hundred dollars and less than one thousand five hundred dollars, two per centum on moneys in excess of one thousand five hundred dollars and less than ten thousand dollars, and one per centum on moneys in excess of ten thousand dollars:

"Provided, That in case of the confirmation of a composition such commissions shall not exceed one-half of one per centum of the amount to be paid creditors on such composition: Provided further, That before the allowance of compensation notice of application therefor, specifying the amount asked, shall be given to creditors in the manner indicated in section fifty-eight of this act."

3. Commissions are to be computed on all moneys disbursed, that is, on all the estate as vested and disbursed. These words are substantially the same as "received and paid."

The rate per centum of commissions has been considerably increased, but only in small or medium sized cases. On estates of over ten thousand dollars, it remains unchanged.

4. When a trustee has been appointed and qualified in a case resulting in a composition, he may allow not to exceed one-half of one per cent of the amount to be paid to creditors. A trustee is rarely appointed in such cases, but may be.

5. Whether there be three trustees or one the com-

pensation of all cannot be more than to one, but the court must apportion the amount between the trustees according to the services actually rendered. This is contrary to the usual rule.

6. A mere resignation or a vacancy because of disqualification, discovered after appointment, would not bar the trustee from compensation.

§ 20. Bonds of Referees and Trustees

1. Amount, etc.
2. When given.
3. Trustee's bond is approved by referee.
4. Consequence of failure to give bond.

1. "Referees, before assuming the duties of their offices, and within such time as the district courts of the United States having jurisdiction shall prescribe, shall respectively qualify by entering into bond to the United States in such sum as shall be fixed by such courts, not to exceed five thousand dollars, with such sureties as shall be approved by such courts, conditioned for the faithful performance of their official duties.

"Trustees, before entering upon the performance of their official duties, and within ten days after their appointment, or within such further time not to exceed five days, as the court may permit, shall respectively qualify by entering into bond to the United States, with such sureties as shall be approved by the courts, conditioned for the faithful performance of their official duties.

"The creditors of a bankrupt estate, at their first meeting after the adjudication, or after a vacancy has occurred in the office of trustee, or after an estate has been reopened, or after a composition has been set aside or a discharge revoked, if there is a vacancy in the office of trustee, shall fix the amount of the bond of the trustee; they may at any time increase the amount of the bond. If the creditors do not fix the amount of the bond of the trustee as herein provided the court shall do so.

"The court shall require evidence as to the actual value of the property of sureties.

"There shall be at least two sureties upon each bond.

"The actual value of the property of the sureties, over and above their liabilities and exemptions, on each bond shall equal at least the amount of such bond.

"Corporations organised for the purpose of becoming sureties upon bonds, or authorised by law to do so, may be accepted as sureties upon the bonds of referees and trustees whenever the courts are satisfied that the rights of all parties in interest will be thereby amply protected.

"Bonds of referees, trustees, and designated depositories shall be filed of record in the office of the clerk of the court and may be sued upon in the name of the United States for the use of any person injured by a breach of their conditions.

"Trustees shall not be liable, personally or on their bonds, to the United States, for any penalties or forfeitures incurred by the bankrupts under

this act, of whose estates they are respectively trustees.

"Joint trustees may give joint or several bonds.

"If any referee or trustee shall fail to give bond, as herein provided and within the time limited, he shall be deemed to have declined his appointment, and such failure shall create a vacancy in his office.

"Suits upon referees' bonds shall not be brought subsequent to two years after the alleged breach of the bond."[1]

Suits upon trustees' bonds shall not be brought subsequent to two years after the estate has been closed.

2. Trustees' bonds must be given within ten days after appointment, or within five days additional, if permitted by the court. Where bonds are given by individuals, there must be two sureties; if by a bonding company there need be but one. The sureties, if individuals, must be worth above their liabilities and exemptions, or penal sum mentioned in the bond. As to this the court shall require evidence.

3. A trustee's bond is usually approved by the referee, whose duty it is forthwith to transmit the bond to the order of the approval of the clerk.

4. Failure to give a bond within the time limited amounts to a declination of office and creates a vacancy. This requirement has not been very strictly construed. The time would probably run from the date of the receipt of the notice rather than from the date of the order fixing the amount.

[1] Sec. 50, of Act.

§ 21. Creditors

1. First meeting.
2. Who can vote.
3. Only non-preferred creditors.
4. When voting may be postponed.
5. May vote personally or by attorney.

1. "The court shall cause the first meeting of the creditors of a bankrupt to be held, not less than ten nor more than thirty days after the adjudication, at the county seat of the county in which the bankrupt has had his principal place of business, resided, or had his domicile; or if that place would be manifestly inconvenient as a place of meeting for the parties in interest, or if the bankrupt is one who does not do business, reside, or have his domicile within the United States, the court shall fix a place for the meeting which is the most convenient for parties in interest.

"If such meeting should by any mischance not be held within such time, the court shall fix the date, as soon as may be thereafter, when it shall be held.

"At the first meeting of creditors the judge or referee shall preside, and, before proceeding with the other business, may allow or disallow the claims of creditors there presented, and may publicly examine the bankrupt or cause him to be examined at the instance of any creditor.

"The creditors shall at each meeting take such steps as may be pertinent and necessary for the promotion

of the best interests of the estate and the enforcement of this act.

"A meeting of creditors, subsequent to the first one, may be held at any time and place when all of the creditors who have secured the allowance of their claims sign a written consent to hold a meeting at such time and place.

"The court shall call a meeting of creditors whenever one-fourth or more in number of those who have proven their claims shall file a written request to that effect; if such request is signed by a majority of such creditors, which number represents a majority in amount of such claims, and contains a request for such meeting to be held at a designated place, the court shall call such meeting at such place within thirty days after the date of the filing of the request.

"Whenever the affairs of the estate are ready to be closed a final meeting of creditors shall be ordered." [1]

2. "Creditors shall pass upon matters submitted to them at their meetings by a majority vote in number and amount of claims of all creditors whose claims have been allowed and are present, except as herein otherwise provided.

"Creditors holding claims which are secured or have priority shall not, in respect to such claims, be entitled to vote at creditors' meetings, nor shall such claims be counted in computing either the number of creditors or the amount of their claims, unless the amounts of such claims exceed the values of such securities or priorities, and then only for such excess." [2]

[1] Sec. 55, of Act. [2] Sec. 56, of Act.

3. The present law in effect gives voting power only to creditors holding claims neither preferred nor secured nor entitled to priority, and declares that a majority shall consist of the larger amount in money and the larger number of individuals.[1] A partnership creditor can be counted only as a single individual. No definite quorum is necessary; one creditor present or duly represented and entitled to a vote may choose a trustee. But no creditor can vote until his claim has been proved and allowed, which means the filing of such proved claim without objection with the proper referee.

Says Judge Archbald: "There is nothing whatever to sustain the position that those who are not present are to be taken into consideration.[2] Even if filed it seems that the referee has the right to determine its voting power if this is called in question. The mere filing of an objection, however, is not sufficient to exclude a claim which on examination seems to be bona fide."[3]

4. If, however, it appears that the vote of a claim to which objection has been made will be decisive of any matter submitted to the creditors the referee should postpone the vote until its validity can be determined.[4]

In such a case it may even be necessary to appoint a receiver for the time being. If possible there should be no postponement of an election of a trustee. If a

[1] In re Henschel, 109 Fed., 861.
[2] In re Mackellar, 116 Fed., 547.
[3] Collier, p. 423.
[4] Collier, p. 425.

majority of the creditors, in number, vote for one person and a majority, in amount, for another, the referee may himself appoint the person favoured by the majority of the creditors.[1] It should take place at the time and place fixed in the notice, and objections which are technical in their nature, or motions made manifestly for the purpose of delay will usually be denied. All creditors who are qualified to vote before the result is announced should be counted; no others should.

If there is a postponement all claims proved in the interval have the same rights as those previously allowed. When, after the first meeting, new creditors have been added, they may, if it appears that their votes would have changed the result, petition for a new election and, if successful, displace the elected trustee.

5. Creditors may appear and vote personally. A member of a partnership or an officer of a corporation presenting a proof of debt should be allowed to vote even though, if represented by an attorney, the power must show letters of authority to act. Creditors sometimes appear specially to assert title to goods sold on consignment, or to save their rights by having objection to the jurisdiction noted, but these are not creditors in the sense used in this section. Combinations of creditors to control judicial proceedings in their own interests will not be favoured.

More generally a referee may require a letter of

[1] In re Richards, 103 Fed., 849.

attorney before allowing another to vote on the claim of a creditor in electing a trustee.[1]

§ 22. Proof and Allowance of Claims

1. How claims are proved.
2. Notice to creditors.
3. Who may file and dismiss petitions.
4. On what provability of claim depends.
5. What claims can be proved:
   - *a.*— Bond to pay annuity,
   - *b.*— Unliquidated claims,
   - *c.*— Claim of assignee of creditor,
   - *d.*— Claim of partnership.
6. When claim may be offered.
7. Amendments to proofs.
8. Notice of objections to claims.
9. Proofs should be filed with referee.

1. "Proof of claims shall consist of a statement under oath, in writing, signed by a creditor setting forth the claim, the consideration therefor, and whether any, and, if so what, securities are held therefor, and whether any, and, if so what, payments have been made thereon, and that the sum claimed is justly owing from the bankrupt to the creditor.

"Whenever a claim is founded upon an instrument of writing, such instrument, unless lost or destroyed, shall be filed with the proof of claim. If such instrument is lost or destroyed, a statement of such fact and

[1] In re Richards, 103 Fed., 849.

of the circumstances of such loss or destruction shall be filed under oath with the claim. After the claim is allowed or disallowed, such instrument may be withdrawn by permission of the court, upon leaving a copy thereof on file with the claim.

"Claims after being proved may, for the purpose of allowance, be filed by the claimants in the court where the proceedings are pending, or before the referee if the case has been referred.

"Claims which have been duly proved shall be allowed upon receipt by, or upon presentation to the court, unless objection to their allowance shall be made by parties in interest, or their consideration be continued for cause by the court upon its own motion.

"Claims of secured creditors and those who have priority may be allowed to enable such creditors to participate in the proceedings at creditors' meetings held prior to the determination of the value of their securities or priorities, but shall be allowed for such sums only as to the courts seem to be owing, over and above the value of their securities or priorities.

"Objections to claims shall be heard and determined as soon as the convenience of the court and the best interests of the estates and the claimants will permit.

"The claims of creditors who have received preferences, voidable under section sixty, subdividsion *b*, or to whom conveyances, transfers, assignments, or incumbrances, void or voidable under section sixty-seven, subdividsion *e*, have been made or given, shall not be allowed unless such creditors shall surrender such

preferences, conveyances, transfers, assignment or incumbrances.

"The value of securities held by secured creditors shall be determined by converting the same into money according to the terms of the agreement pursuant to which such securities were delivered to such creditors or by such creditors and the trustee, by agreement, arbitration, compromise, or litigation, as the court may direct, and the amount of such value shall be credited upon such claims, and a dividend shall be paid only on the unpaid balance.

"Whenever a creditor, whose claim against a bankrupt estate is secured by the individual undertaking of any person, fails to prove such claim, such person may do so in the creditor's name, and if he discharge such undertaking in whole or in part he shall be subrogated to that extent to the rights of the creditor.

"Debts owing to the United States, a state, a county, a district, or a municipality as a penalty or forfeiture shall not be allowed, except for the amount of the pecuniary loss sustained by the act, transaction, or proceeding out of which the penalty of forfeiture arose, with reasonable and actual costs occasioned thereby and such interest as may have accrued thereon according to law.

"Claims which have been allowed may be reconsidered for cause and reallowed or rejected in whole or in part, according to the equities of the case, before, but not after, the estate has been closed.

"Whenever a claim shall have been reconsidered and rejected, in whole or in part, upon which a dividend

has been paid, the trustee may recover from the creditor the amount of the dividend received upon the claim if rejected, in whole or the proportional part thereof, if rejected only in part.

"The claim of any estate which is being administered in bankruptcy against any like estate may be proved by the trustee and allowed by the court in the same manner and upon like terms as the claims of other creditors.

"Claims shall not be proved against a bankrupt estate subsequent to one year after the adjudication; or if they are liquidated by litigation and the final judgment therein is rendered within thirty days before or after the expiration of such time, then within sixty days after the rendition of such judgment: Provided, That the right of infants and insane persons without guardians, without notice of the proceedings, may continue six months longer." [1]

2. Creditors shall have at least ten days' notice by mail, to their respective addresses as they appear in the list of creditors of the bankrupt, or as afterwards filed with the papers in the case by the creditors unless they waive notice in writing, of (1) all examinations of the bankrupt; (2) all hearings upon applications for the confirmation of compositions; (3) all meetings of creditors; (4) all proposed sales of property; (5) the declaration and time of payment of dividends; (6) the filing of the final accounts of the trustee, and the time when and the place where they will be examined and passed upon;

[1] Sec. 57, of Act.

(7) the proposed compromise of any controversy; (8) the proposed dismissal of the proceedings, and (9) there shall be thirty days' notice of all applications for the discharge of bankrupts.

Notice to creditors of the first meeting shall be published at least once and may be published such number of additional times as the court may direct; the last publication shall be at least one week prior to the date fixed for the meeting. Other notices may be published as the court shall direct.

All notices shall be given by the referee, unless otherwise ordered by the judge.

3. Any qualified person may file a petition to be adjudged a voluntary bankrupt.

Three or more creditors who have provable claims against any person which amount in the aggregate in excess of the value of securities held by them, if any, to five hundred dollars or over; or if all of the creditors or such persons are less than twelve in number, then one of such creditors whose claim equals such amount may file a petition to have him adjudged a bankrupt.

Petitions shall be filed in duplicate, one copy for the clerk and one for service on the bankrupt.

If it be averred in the petition that the creditors of the bankrupt are less than twelve in number, and less than three creditors have joined as petitioners therein, and the answer avers the existence of a larger number of creditors, there shall be filed with the answer a list under oath of all the creditors, with their addresses, and thereupon the court shall cause all such

creditors to be notified of the pendency of such petition and shall delay the hearing upon such petition for a reasonable time, to the end that parties in interest shall have an opportunity to be heard; if upon such hearing it shall appear that a sufficient number have joined in such petition, or if prior to or during such hearing a sufficient number shall join therein, the case may be proceeded with, but otherwise it shall be dismissed.

In computing the number of creditors of a bankrupt for the purpose of determining how many creditors must join in the petition, such creditors as were employed by him at the time of the filing of the petition or are related to him by consanguinity or affinity within the third degree, as determined by the common law, and have not joined in the petition, shall not be counted.

Creditors other than original petitioners may at any time enter their appearance and join in the petition, or file an answer and be heard in opposition to the prayer of the petition.

A voluntary or involuntary petition shall not be dismissed by the petitioner or petitioners for want of prosecution or by consent of parties until after notice to the creditors, and to that end the court shall, before entertaining an application for dismissal, require the bankrupt to file a list, under oath, of all his creditors, with their addresses, and shall cause notice to be sent to all such creditors of the pendency of such application, and shall delay the hearing thereon for a reasonable time to allow all credi-

tors and parties in interest opportunity to be heard.

4. The provability of a claim depends on its status or condition at the time the petition is filed.

5. Liabilities grounded on contract are, almost without exception, provable. So also are judgments grounded in writing.

The contract must, of course, be founded on a legal consideration, not be against public policy, and, if by a corporation, not beyond its powers; nor need the claim be evidenced by a judgment or instrument in writing. If there is no present liability under the contract when proof is made, there can be no provable claim. A claim for damages for breach of warranty on a sale of personal property is for a debt founded on a contract, and is provable, although the amount is undetermined. Thus a sub-contractor was held to have no claim provable in bankruptcy for materials furnished to a contractor where the agreement between them required no payment unless payment was made to the contractor by the owner.

(*a*) A bond to pay an annuity may be proved; likewise a salesman's claim on an annual contract which the bankruptcy of the employer makes impossible.

(*b*) There is a broad distinction between unliquidated damages and contingent liabilities. The phrase "unliquidated claims" may refer to both. Substantially all liabilities either on contract or writing, provided they are liquidated either before the bankruptcy, or if not, thereafter, are provable debts. There are however, some exceptions. These are

judgments for fines; alimony due or to accrue, rent to accrue, debts outlawed by statute of limitations.

(*c*) An assignee of a creditor has a provable debt, if this were so of the assignor even if the assignment postdated the bankruptcy, but when a creditor is a debtor of the bankrupt in a larger amount than the sum claimed, his claim is not provable. An executor may prove a debt against the bankrupt notwithstanding a provision in the will for a deduction of any debt due the testator from him. An alien creditor may prove a claim. Under a statute rendering invalid a direct gift of corporate stock from husband to wife, her loan of the certificates, endorsed in blank to him, creates no allowable claim against his estate.

(*d*) A member of a firm may prove his claim against it; and the firm may prove its claim, if having one, against him. A partner sold out to his copartner pending the insolvency of the firm, receiving note in payment for his interest. Two months later the continuing partner filed a voluntary petition in bankruptcy. The assets in his hands were: (1) proceeds of the sale of the business plant formerly owned by the firm; (2) proceeds of the collection of debts arising from the sale of goods sold to the firm; (3) proceeds of a contingent interest in real estate intrusted by the bankrupt; (4) money received by the bankrupt for goods sold by him after the firm was dissolved. The retiring partner could not prove his notes since to permit him to do so would permit him to compete with his own creditors.[1]

[1] In re Denning, 114 Fed., 219.

6. A claim may be offered for proof after the expiration of the year whenever the delay in its presentation was caused by the bankrupt's fraud in so preparing his schedules as to lead creditors to believe that there was practically no estate for distribution. On one occasion a bankrupt by thus acting led one small creditor only to prove his claim. The claims of the others, so the court held, were not defeated by the bankrupt's fraudulent conduct.[1] The statute was intended to affect the right of a tardy creditor to prove in competition with creditors who had been diligent, not the right of a bankrupt to prevent the payment of a creditor whose tardiness had been caused by the bankrupt's own fraud.

7. The referee will usually allow such amendment to proofs of debt as justice requires, and objected claims are often expunged or allowed to be withdrawn with leave to amend and refile them. Thus a claim filed within the required time may be amended even after a year for the purpose of supplying the oath of the creditor.[2] But an amendment which in effect would be the proving of a new claim will not be allowed after the expiration of a year.[3]

8. The requirement that the referee give immediate notice to the original creditor, and the ten-day limit on the filing of objection to such creditor, should be noted. Claims assigned before the bankruptcy, as well as those assigned after, but before proof, must be

[1] In re Towne, 122 Fed., 313.
[2] In re Roeber, 127 Fed., 122.
[3] In re Moebrus, 116 Fed., 47.

supported by the deposition of the owner at the time of the bankruptcy. If he is also the claimant the ordinary proof of debt would seem enough.

9. Proofs of debt should be filed with the referee. If filed with the clerk of the district court he should transmit them to the referee, and likewise the trustee. If he does not deliver such proofs, the creditors should not be charged with his failure.

§ 23. Proof of Preferred Claims

1. Who is a preferred creditor.
2. May surrender his security or not as he pleases.
3. Notes given to third parties.
4. Surety, indorser, etc.
5. Surrender of preference.
6. Chattel mortgage.
7. Voluntary general assignment.
8. What is a preference.
9. On whom is burden of showing insolvency.
10. Meaning of "four months."
11. Meaning of "transfer."

1 "A person shall be deemed to have given a preference if, being insolvent, he has, within four months before the filing of the petition, or after the filing of the petition and before the adjudication, procured or suffered a judgment to be entered against himself in favour of any person, or made a transfer of any of his property, and the effect of the enforcement of such judgment or transfer will be to enable any one of his

creditors to obtain a greater percentage of his debt than any other of such creditors of the same class. Where the preference consists in a transfer, such period of four months shall not expire until four months after the date of the recording or registering of the transfer, if by law such recording or registering is required.

"If a bankrupt shall have procured or suffered a judgment to be entered against him in favour of any person or have made a transfer of any of his property, and if, at the time of the transfer, or of the entry of the judgment, or of the recording or registering of the transfer if by law recording or registering thereof is required, and being within four months before the filing of the petition in bankruptcy or after the filing thereof and before the adjudication, the bankrupt be insolvent and the judgment or transfer then operate as a preference, and the person receiving it or to be benefited thereby, or his agent acting therein, shall then have reasonable cause to believe that the enforcement of such judgment or transfer would effect a preference, it shall be avoidable by the trustee and he may recover the property or its value from such person. And for the purpose of such recovery any court of bankruptcy, as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

"If a creditor has been preferred, and afterwards in good faith gives the debtor further credit without security of any kind for property which becomes a part of the debtor's estates, the amount of such new credit remaining unpaid at the time of the adjudication in

bankruptcy may be set off against the amount which would otherwise be recoverable from him.

"If a debtor shall, directly or indirectly, in contemplation of the filing of a petition by or against him, pay money or transfer property to an attorney and counselor at law, solicitor in equity, or proctor in admiralty for services to be rendered, the transaction shall be re-examined by the court on petition of the trustee or any creditor and shall only be held valid to the extent of a reasonable amount to be determined by the court, and the excess may be recovered by the trustee for the benefit of the estate." [1]

2. A secured creditor has a limited meaning in bankruptcy. He may surrender his security or not as he pleases. If surrendered it inures to the benefit of all creditors, and his claim, if otherwise unobjectionable, is allowed at the full amount. If not surrendered, he can have his claim allowed temporarily to enable him to participate in creditors' meetings prior to the determination of the value of his security, but only for such sums as are owing above the security. He may retain his security and prove for the amount of his claim after deducting the value of his security. The value of securities is fixed summarily at first meetings to permit a creditor to vote the unsecured balance. A claimant may be fully secured; if so, he should not be allowed to file a proof and does not become a party to the proceeding. "If secured creditors rely upon their security, they are not parties to the bankruptcy proceedings at all." [2]

[1] Sec. 60, of Act.

[2] In re Goldsmith, 118 Fed., 763, 767.

"A holder of a promissory note containing a waiver of exemption is in effect a secured creditor. A creditor by proving an unsecured claim is not barred from proving the amount of a secured claim less the sum realised on the security. In a debt, secured by a life insurance policy, the value of it should be deducted, and the balance proved against the estate. A creditor whose claim is secured or partly paid by an accommodation indorser may prove the claim to its full amount, and exclude from the bankrupt estate the value of such security or part payment. When book accounts are assigned to secure a debt the creditor must turn over to the trustee the balance of the amount collected by him remaining after payment of his debt, without reference to the adverse claim of another creditor."[1]

3. The payment of notes given to third parties and discounted by a bank is a preferential payment to it and not to the payee of the notes, and must be surrendered before the bank can prove its claim for other indebtedness to the bankrupt. The law clearly prescribes that a creditor who has several claims of the same class, on one of which he has a secured preference, must surrender it before any of his claims can be allowed.[2]

4. A surety, indorser or other person who pays the debt of his principal is put in his position and therefore may prove the principal creditor's debts, but he also takes it subject to the same limitations.[3] Since the

[1] Collier, p. 438.
[2] Swarts v. Fourth Nat. Bank, 117 Fed., 1.
[3] Swarts v. Siegel, 117 Fed., 1.

right to prove exists primarily in the principal creditor, the surety cannot, after discharging part of the debt, prove to the same amount against the estate.

5. The law requires the surrender of such preferences given to the creditor within the time limited in the act before he can prove his claim. The transfers of property, amounting to preferences, contemplate the parting with the bankrupt's property for the benefit of the creditor and the consequent diminution of the bankrupt's estate. It is such transactions, operating to defeat the purpose of the act, which under its terms are preferences.[1]

Unlike a fraudulent preference, a fraudulent transfer may be made at a time when the transferer is insolvent, but intent to hinder, delay or defraud being necessary, insolvency will usually be an element of proof.

6. Any chattel mortgage which is ineffectual against creditors under the law of the state of the transaction is ineffectual as against the trustee. Voluntary settlements, if made by an insolvent husband to his wife, are held void. No matter how devious the method, if the wife gets the property from an insolvent husband without consideration, intent will be presumed and the transfer will be set aside. Similarly transfers to other relations are suspicious and require strict proof. But a transfer made in good faith to a wife in consideration of her release of her dower right, is valid.

7. Voluntary general assignments, whether with or without preference are legal frauds, and therefore voidable.

[1] New York County Bank v. Massey, 192 U. S. 138., 147.

8. A preference consists in a person while insolvent within four months of the bankruptcy procuring or suffering a judgment to be entered against himself or making a transfer of his property, the effect of which will be to enable one creditor to obtain a greater percentage of his debts than any other creditor of the same class. Such a preference is voidable at the instance of the trustee if the person recovering it or to be benefited thereby has reasonable cause to believe that it was thereby intended to give a preference. In one of the cases the preference was declared to consist of three elements (1) insolvency of the bankrupt when the transfer was made; (2) making within the four months' period named; and having the effect "to enable any one of his creditors to obtain a greater percentage of his debt than any other of such creditors of the same class."[1]

9. The burden of showing insolvency is on the allegor. The debtor must have been insolvent at the time the preference was committed. Insolvency must be alleged and found as a fact; mere belief is not enough, nor is danger of insolvency.

10. The meaning of "four months" is the filing of the petition. If a preference was given before the enactment of the law it cannot be disturbed. The period usually begins to run from the moment the judgment or transfer takes effect.

11. The word "transfer" includes every mode of disposing of property, including the payment of money. The method of transfer is immaterial. Nor is the fact

[1] J. W. Butler Paper Co., v. Goembel, 143 Fed., 295, 296.

that the transfer was made in good faith material if it was made within the prescribed period to secure an antecedent debt, and was intended as a preference. Nor can a fictitious transaction not affecting the estate of the debtor or the rights of creditors, be deemed a transfer although assuming the form of one. Nor can a transfer which does not diminish the general fund consisting of the giving of a fair security for a present loan. A transfer of firm property in payment of an individual partner's debt is a preference, which precludes the bank from proving its debt against the firm unless it surrenders its preference.[1]

A post-dated check constitutes a transfer at the time of its payment, and the question of preference is to be determined by the conditions existing at such time. An absolute transfer of an account against an insolvent debtor made in good faith to a person who afterwards purchases goods from the debtor and gives in payment therefor the account thus transferred to him, is not a transaction prohibited by the bankruptcy act; but if such a transaction was entered into for the purpose of indirectly evading the act, and procuring an undue preference to the creditor it is voidable.

§ 24. Debts Which Have Priority

1. Debts which have priority.
2. Wages.
3. Who is meant by workman.
4. What landlord must do to establish his priority.

[1] In re Gillette, 104 Fed., 769 A. A.

1. "The court shall order the trustee to pay all taxes legally due and owing by the bankrupt to the United States, state, county, district, or municipality in advance of the payment of dividends to creditors, and upon filing the receipts of the proper public officers for such payment he shall be credited with the amount thereof, and in case any question arises as to the amount or legality of any such tax the same shall be heard and determined by the court.

"The debts to have priority, except as herein provided, and to be paid in full out of bankrupt estates, and the order of payment shall be (1) the actual and necessary cost of preserving the estate subsequent to filing the petition;

(2) the filing fees paid by creditors in involuntary cases, and, where property of the bankrupt, transferred or concealed by him either before or after the filing of the petition, shall have been recovered for the benefit of the estate of the bankrupt by the efforts and at the expense of one or more creditors, the reasonable expenses of such recovery;

(3) the cost of administration, including the fees and mileage payable to witnesses as now or hereafter provided by the laws of the United States, and one reasonable attorney's fee, for the professional services actually rendered, irrespective of the number of attorneys employed, to the petitioning creditors in involuntary cases, to the bankrupt in involuntary cases while performing the duties herein prescribed, and to the bankrupt in voluntary cases, as the court may allow;

(4) wages due to workmen, clerks, travelling, or city salesmen, or servants which have been earned within three months before the date of the commencement of proceedings, not to exceed three hundred dollars to each claimant; and

(5) debts owing to any person who by the laws of the states or the United States is entitled to priority.

"In the event of the confirmation of a composition being set aside, or a discharge revoked, the property acquired by the bankrupt in addition to his estate at the time the composition was confirmed or the adjudication was made shall be applied to the payment in full of the claims of creditors for property sold to him on credit, in good faith, while such composition or discharge was in force, and the residue, if any, shall be applied to the payment of the debts which were owing at the time of the adjudication." [1]

2. What debts have priority? First: They are debts due to the United States; taxes; the cost of preserving the bankrupt's estate, the cost of administration; wages. Of wages something more must be said. A different priority to the wage-earner may be given to him by the state law. A labourer may be entitled to priority of payment, although he has not perfected his lien under a state statute. An assignee of a claim for wages is entitled to priority of payment although the assignment was made prior to the beginning of bankruptcy proceedings. If the claim be assigned after proof the assignee is put in the place of the assignor. The labour must have been performed

[1] Sec. 64, of Act.

within three months of the filing of the petition, although a different and longer period be prescribed by a state statute. If a labour claim is reduced to a judgment within the four months' period, priority may still be asserted to the amount of the judgment but probably not for the costs. The claim must be for wages actually earned within the prescribed time, and a judgment for a breach of contract of employment based on an unlawful discharge of the employee, is not entitled to priority.

3. What is the meaning of workmen, clerks or servants? This is not, as Collier says, controlled by the statutory definition of "wage-earner." The words are used in a common and proper sense. The phrase "operative clerk or house-servant" in the law of 1867 is regarded as practically equivalent. Under the present law the following have been held not entitled to priority under this sub-section: a contractor, a general buyer for jobbers, an officer or manager of a corporation, a blacksmith shoeing horses and repairing tools in his own shop, and a person engaged merely in an incidental agency. But a clerk selling goods in a store is entitled to priority, and so is a labourer, working by the piece.

The fees and expenses of general assignees and receivers and their attorneys; the assignee who accepts the trust in good faith and executes it intelligently, is entitled to a fair and reasonable compensation for his services and those of his attorneys, from the assets turned over by him to the trustee in bankruptcy of his assignor. But it must appear that the services

rendered were an actual benefit to the estate, and that the assignment was not made for the purpose of avoiding inevitable bankruptcy.

4. A landlord who has a lien or charge for the rent due him on the property of his tenant at the time of his bankruptcy, which has not been judicially ascertained, in order to preserve his right to priority must establish his claim by proof under the bankruptcy act like other creditors.[1] "Of such a claim mere notice to the trustee could not be sufficient proof; nothing could prove it except the formalities and the evidence required by the act."[2]

§ 25. Dividends

1. Declaration and payment of dividends.
2. Unclaimed dividends.
3. When first dividend must be declared.

1. "Dividends of an equal per centum shall be declared and paid on all allowed claims, except such as have priority or are secured.

"The first dividend shall be declared within thirty days after the adjudication, if the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as have not been, but probably will be, allowed equals five per centum or more of such allowed claims. Dividends subsequent to the first shall be declared upon like terms as

[1] In re Hayward, 130 Fed., 120.
[2] Ibid.

the first and as often as the amount shall equal ten per centum or more and upon closing the estate. Dividends may be declared oftener and in smaller proportions if the judge shall so order: Provided, That the first dividend shall not include more than fifty per centum of the money of the estate in excess of the amount necessary to pay the debts which have priority and such claims as probably will be allowed: And provided further, That the final dividend shall not be declared within three months after the first dividend shall be declared.

"The rights of creditors who have received dividends, or in whose favour final dividends have been declared, shall not be affected by the proof and allowance of claims subsequent to the date of such payment or declarations of dividends; but the creditors proving and securing the allowance of such claims shall be paid dividends equal in amount to those already received by the other creditors if the estate equals so much before such other creditors are paid any further dividends.

"Whenever a person shall have been adjudged a bankrupt by a court without the United States and also by a court of bankruptcy, creditors residing within the United States shall first be paid a dividend equal to that received in the court without the United States by other creditors before creditors who have received a dividend in such court shall be paid any amounts.

"A claimant shall not be entitled to collect from a bankrupt estate any greater amount than shall accrue pursuant to the provisions of this act."[1]

[1] Sec. 65, of Act.

2. Dividends which remain unclaimed for six months after the final dividend has been declared shall be paid by the trustee into court.

Dividends remaining unclaimed for one year shall, under the direction of the court, be distributed to the creditors whose claims have been allowed but not paid in full, and after such claims have been paid in full the balance shall be paid to the bankrupt: Provided, That in case unclaimed dividends belong to minors such minors may have one year after arriving at majority to claim such dividends.

3. The first dividend must be declared within thirty days after adjudication, if a dividend of five per cent, can be paid on all claims whether allowed or not. In doing so, claims scheduled but not yet allowed must be included. In all other cases the referee declares the dividend and orders it paid. The assignee formerly did this. Dividends only can be declared at meetings of the creditors.

§ 26. Set-off and Counterclaims

1. When set-offs may be allowed.
2. When not allowed.
3. Are mutual debts the same as mutual credits?
4. Time of determining set-off.
5. Debts or credits need not be of same character.
6. When set-off is waived.

1. "In all cases of mutual debts or mutual credits between the estate of a bankrupt and a creditor the

account shall be stated and one debt shall be set off against the other, and the balance only shall be allowed or paid.

2. "A set-off or counterclaim shall not be allowed in favour of any debtor of the bankrupt which (1) is not provable against the estate; or (2) was purchased by or transferred to him after the filing of the petition, or within four months before such filing, with a view to such use and with knowledge or notice that such bankrupt was insolvent, or had committed an act of bankruptcy."[1]

3. Mutual debts are something different from mutual credits. Collier says: "In effect at least under the present law there can be practically no difference. In ultimate analysis a mutual credit is not unlike an unliquidated debt, and such debts are now provable. There are, however, some exceptions to the rule of mutual credits. Thus, if the credit will not terminate a debt, or if a creditor intrusted by the debtor with goods has not the right to sell them until after the bankruptcy, or if such goods are delivered to the creditor for a specific purpose, a mutual credit does not arise, and there can be no set-off."[2]

4. Strictly, the time when the right to set-off is determined is the time the petition is filed. Nor is the question of present or future payment of the debt important. Debt means any debt, demand, of claim provable in bankruptcy; thus unliquidated claims may be set off against liquidated and it is

[1] Sec. 68, of Act.
[2] Page 793.

thought, under the present law, even liabilities in the end, against those purely on contract.

5. The debts or credits need not be of the same character. Thus the mutual debts need not arise out of the same transaction, or be for money owed the one to the other. The basic test is mutuality, not similarity of obligation.

6. If a creditor proves his debt, without claiming set off, he will generally be deemed to have waived it. At the same time a mistake is usually an excuse for leave to withdraw, and to amend.

Thus a debt due one as an executor cannot be set off against a debt due from him individually; a tenant's unliquidated damages for the landlord's negligence in permitting water to come upon the premises may not be set off against the landlord's claim for rent; a creditor of a corporation cannot set off his liability for unpaid subscriptions for its stock and where the ownership of the claim is merely nominal it cannot be set off against a debt due from such owner. But the trustee in bankruptcy may set off claims which have vested in him, even though they never vested in the bankrupt.

A joint claim, as that of a partnership, cannot be set off against the debt of one of the individuals jointly claiming.

§ 27. Title to Property

1. Trustee acquires the title.
2. What property passes to trustee.

3. Life insurance policy.
4. Property sold to bankrupt on condition.
5. Trustee takes property charged with liens and equities.

1. "The trustee of the estate of a bankrupt, upon his appointment and qualification, and his successor or successors, if he shall have one or more, upon his or their appointment and qualification shall in turn be vested by operation of law with the title of the bankrupt, as of the date he was adjudged a bankrupt, except in so far as it is to property which is exempt, to all

(1) documents relating to his property;

(2) interests in patents, patent rights, copyrights, and trade-marks;

(3) powers which he might have exercised for his own benefit, but not those which he might have exercised for some other person;

(4) property transferred by him in fraud of his creditors;

(5) property which prior to the filing of the petition he could by any means have transferred or which might have been levied upon and sold under judicial process against him: Provided, That when any bankrupt shall have any insurance policy which has a cash surrender value payable to himself, his estate or personal representatives, he may, within thirty days after the cash surrender value has been ascertained and stated to the trustee by the company issuing the same, pay or secure to the trustee the sum so

ascertained and stated, and continue to hold, own, and carry such policy free from the claims of the creditors participating in the distribution of his estate under the bankruptcy proceedings, otherwise the policy shall pass to the trustee as assets; and

(6) rights of action arising upon contracts or from the unlawful taking or detention of, or injury to, his property.

"All real and personal property belonging to bankrupt estates shall be appraised by three disinterested appraisers; they shall be appointed by, and report to, the court. Real and personal property shall, when practicable, be sold subject to the approval of the court; it shall not be sold otherwise than subject to the approval of the court for less than seventy-five per centum of its appraised value.

"The title to property of a bankrupt estate which has been sold, as herein provided, shall be conveyed to the purchaser by the trustee.

"Whenever a composition shall be set aside, or discharge revoked, the trustee shall, upon his appointment and qualification, be vested as herein provided with the title to all of the property of the bankrupt as of the date of the final decree setting aside the composition or revoking the discharge.

"The trustee may avoid any transfer by the bankrupt of his property which any creditor of such bankrupt might have avoided, and may recover the property so transferred, or its value, from the person to whom it was transferred, unless he was a bona fide holder for value prior to the date of the adjudication. Such

property may be recovered or its value collected from whoever may have received it, except a bona fide holder for value. For the purpose of such recovery any court of bankruptcy as hereinbefore defined, and any state court which would have had jurisdiction if bankruptcy had not intervened, shall have concurrent jurisdiction.

"Upon the confirmation of a composition offered by a bankrupt, the title to his property shall thereupon revest in him."[1]

2. What property passes to the trustee after he has qualified to act? Contingent interests in land in many cases. With respect to dower and curtesy rights the state law controls. If the doweress is the bankrupt and her estate is vested in her, the trustee takes her interest; if her interest is not vested, it does not pass. Likewise if the husband's curtesy is vested it passes; otherwise it does not pass.

Property rights, which by their terms are either non-assignable or restricted to the person originally acquiring them, often furnish difficult problems, like licenses and franchises. Personal privileges are not assignable. This is the general rule. The trustee of a bankrupt tenant, therefore, is entitled to the leased premises for the remainder of the term. A contract between a publisher and an author whereby the former undertakes to publish and market literary productions of the latter is not assignable.

Nor is a contract with a person for the manufacture of a particular commodity requiring special skill of

[1] Sec. 70, of Act.

the manufacturer. Whether a franchise or a license passes to the trustee on the bankruptcy of the owner depends usually on the terms of the instrument creating it, or, if that is silent, on whether its nature calls for personal skill or discretion. A bankrupt may be ordered to transfer his seat in a stock exchange to his trustee but whether the seat in a stock exchange belongs to a bankrupt and is therefore to be administered as part of his assets by the trustee depends on the facts in each particular case. Special property by way of lien in securities deposited with the bankrupt as a pledge is not property within the meaning of the act which passes to the trustee.

3. Life insurance policies are akin to those of personal privileges just considered.

4. Property sold to the bankrupt on condition may pass to the bankrupt's trustee. If the bankrupt was in possession under an invalid contract, for example, one not filed in accordance with that law, both possession and title pass to the trustee. But creditors are not purchasers or lienors. In some states the rule obtains that the delivery of goods with the proviso that the title shall not pass until the purchase price has been paid, is void with respect to the creditors of the party to whom they are delivered. In such case goods found in the bankrupt's possession delivered under such conditions pass to the trustee.

Under a statute providing that an unrecorded contract of conditional sale is void only as against subsequent purchasers, pledges or mortgages in good faith, a failure to record such a contract prior to the ad-

judication of the bankrupt or vendee, does not affect the title of the conditional vendee as against the vendee's trustee. When seizure is necessary to establish the creditor's rights title will not pass unless seizure is made before the bankruptcy.

5. Since the trustee takes the bankrupt's property charged with all claims and equities against it, his title to the same is inferior to that of one who was induced to sell on materially false representations. In such cases the claimant usually proceeds to recover his property, by an action of replevin, which in most large trade centres has of late been common if not notorious.

False representations concerning the financial status of a buyer as a basis of credit and without which the sale would not have been made, are fraudulent, and the seller may reclaim the goods thereby obtained. He should exercise this right before he has of his own volition placed himself in the position of a creditor, for if he joins in the election of a trustee, with knowledge of the fraud perpetrated against him, he is estopped or prevented from insisting on a return of the goods.

Where machinery or other articles are sold upon the condition that if they are not satisfactory the purchaser may return them, and such purchaser prior to his bankruptcy expressed himself as dissatisfied and declared that he would not accept such machinery or articles, the seller may reclaim them and the receiver or trustee of the bankrupt purchaser will not be heard to say that the refusal of the bankrupt to

accept was arbitrary or capricious, fraudulent and in bad faith.

So also reclamation should be permitted where the bankrupt was in possession of articles being manufactured by him under contracts requiring payment at stated periods, which had been regularly made, it appearing that the trustee did not intend to complete the contract and deliver the articles.

If personal property be sold upon the express condition that payment be made on delivery, and delivery is made on the faith that the condition will be immediately performed, and payment is refused on demand, title does not pass and the seller may be permitted to reclaim the property. If the property is consigned to be sold under terms and at prices fixed by the consignor, the contract is not one of sale but is a bailment, and the consignor may reclaim. Identity is an indispensable thing with respect to right of possession.[1]

[1] Collier, pp. 587, 593, 597.

CHAPTER XVIII

AUTOMOBILE LAW

1. May be used on highways.
2. How the right is limited.
3. Degree of care required of chauffeurs.
4. What statutes require of him.
5. How he must avoid injuring persons on the streets.
6. Liability of owner for chauffeur's negligence.
7. Liability for wrongful use of machine by another.
8. Owner is not liable for injury caused by an intervening agency.
9. Duty of garage keeper.
10. Duty of hirer of automobile.
11. Lien of garage keeper.
12. Rights of purchasers.
13. Warranty of machine.
14. Remedy of purchaser when warranty is broken.
15. Right and duty of purchaser to inspect.

1. ONE of the first questions after the introduction of automobiles was the right to use them on the public streets and highways. The law presumes that the public ways will be used by other and improved modes of locomotion than were in existence when they were laid out and dedicated to public use. Says

the Supreme Court of Michigan:[1] "Persons making use of horses as means of travel or traffic by the highways have no rights therein superior to those who make use of the ways in other modes. . . . Improved methods of locomotion are perfectly admissible if any shall be discovered, and they cannot be excluded from the existing public roads, provided their use is consistent with the present methods." And the Supreme Court of Indiana[2] has well said that "because automobiles are novel and unusual in appearance, and for that reason likely to frighten horses unaccustomed to seeing them, is no reason for prohibiting their use. In all human activities the law keeps up with the improvement and progress brought about by discovery and invention, and, in respect to highways, if the introduction of a new contrivance for transportation purposes, conducted with due care, is met with inconvenience and even incidental injury to those using ordinary modes, there can be no recovery, provided the contrivance is compatible with the general use and safety of the road."

2. The right to use automobiles on the highways is not an unqualified right. The rights of persons using other modes of locomotion must not thereby be impaired. A writer has thus expressed the limitations: "The right of one person to an unusual or peculiar use of a highway must be reasonably consistent with the right of all other persons in their use of such highways."

[1] Macomber v. Nichols, 34 Mich., 212.
[2] Indiana Springs Co. v. Brown, 74 N. E. Rep., 615.

3. The kind or degree of care required of chauffeurs or drivers is the most important, perhaps, of all the questions on this subject. The Supreme Court of New York has thus expressed the rule: "While the automobile is a lawful means of conveyance, and has equal rights upon the roads with the horse and carriage, its use cannot be lawfully countenanced unless accompanied with that degree of prudence in management and consideration for the rights of others which is consistent with safety."[1] Statutory laws almost everywhere regulate the speed, but even when the speed limit is strictly observed, the chauffeur does not always fulfil his duty by observing the speed limit. Something more is often required when passing a horse. The chauffeur must look at the animal, and if he discovers that it is restive or frightened, he must do his best to quiet it, instead of rushing on unmindful of the danger to horse and driver. This duty is so important as to justify its expression in judicial language: "As drivers are about to meet on the road, each owes to the other the reciprocal duty to conduct himself and conveyance in a manner to avoid placing the other in jeopardy. And when the defendant saw the plaintiff's horse had become frightened at the rapid approach of the strange, noisy carriage, and that plaintiff was in danger, it was the highest moral, as well as legal duty of the defendant to stop and remove the plaintiff's peril rather than to increase it by rushing onward. . . . The law of the road does not tolerate any such in-

[1] Knight v. Lanier, 69 App. Div., 454.

considerate and reckless disregard of the rights of other travellers on the highway." [1]

In a more recent case the Supreme Court of Kentucky has remarked: "While automobiles are a lawful means of conveyance, and have equal rights upon the public roads with horses and carriages, their use should be accompanied with that degree of prudence in management, and consideration for the rights of others which is consistent with their safety. If, as the jury have found by their verdict, appellee knew or could have known by the exercise of ordinary care, that the machine in his possession and under his control had so far excited appellant's horse as to render him dangerous and unmanageable, it was his duty to have stopped his automobile and taken such other steps for appellant's safety as ordinary prudence might suggest." [2]

4. The statutes in many of the states prescribe the duties of a chauffeur when meeting horses on the highway. These generally require him to stop his machine when the driver of the other conveyance, by request or signal of some kind desires this to be done. A writer who has carefully studied the case says that where the chauffeur sees or knows, or by the exercise of ordinary care might know, that his automobile by reason of its unusual and peculiar construction, or by reason of the rate of speed at which it is driven, is frightening the horse or team of another using the highway, and that such horse or team will

[1] Indiana Springs Co. v. Brown, 74 N. E. Rep., 615.
[2] Shinkle v. McCullough, 116 Ky., 960.

become unmanageable and is likely to injure the persons in the vehicle drawn by the horse or team, it is his duty to stop the automobile immediately and give the other person reasonable time in which to extricate himself from any probable injury.

5. The chauffeur must observe the same rules when meeting individuals in the streets or highways. When he knows, or would have known by exercising a proper lookout, that a child or somewhat helpless person is in a disadvantageous position and is in danger, the chauffeur must exercise more care in order to avoid injury. He must bring his machine within control. He is required to take notice that people will be at the usual crossing places in the streets, and they have a right to assume that he will act accordingly. On one occasion it was held to be his duty to respect the rights of a person who was standing in the road talking with another who was sitting in a carriage. Again, it has been decided that the chauffeur must know and respect the rights of a person to step from a street car into the street and seek to avoid a collision. In a well considered case a court has said: "No owner or operator of an automobile is therefore exempt from liability for collision in a public street by simply showing that at the time of the accident he did not run at a rate of speed exceeding the limit allowed by law or ordinance. On the contrary, he still remains bound to anticipate that he may meet persons at any point in a public street, and he must keep a proper lookout for them, and keep his machine under such control as will enable him to avoid a collision with

another person also using proper care and caution. If necessary, he shall slow up, and even stop. . . . The true test is, that he must use all the care and caution which a careful and prudent driver would have exercised under the same circumstances."[1]

6. With respect to the liability of the owner of a machine for the negligence of his chauffeur, the general rule governing master and servant applies. The following instruction to a jury has been approved by a court of review: "If the jury find either that the defendant left the automobile in charge of his son and coachman together to take it home, or in charge of the coachman alone, and the coachman neglected his duty in that regard, and allowed the son to run the machine, and by the negligence of the son the accident occurred, without contributory negligence on the plaintiff's part, then in either case the defendant is responsible and liable for that negligence and its consequences."[2] To make out a case, however, it must be shown that the defendant was the owner of the machine, and that the driver was employed by him.

7. There can be no liability when the relationship of master and servant does not exist. Consequently, the owner is not liable for an injury caused by a driver who is not in his employ. In one of the cases a son in his father's employ was given a holiday. Without his father's knowledge he took his father's automobile for a joy ride, which proved to be otherwise,

[1] Thies v. Thomas, 77 N. Y. Supp., 296.
[2] Collard v. Beach, 81 App. Div., 582.

for he operated the machine so unskilfully that he frightened a team of horses which ran away and injured the driver. Nevertheless, the father was not liable.[1] This principle covers a large class of accident cases in which automobiles are used without their owners' knowledge by other persons.

8. Again, if there be injury caused by an intervening agency, there can be no recovery. Thus, a chauffeur left his machine in the street while he went away to deliver a parcel. He turned off the power and set the brake. During his absence two boys took possession, started the machine and injured someone. The owner was not liable. In reviewing the case, a higher court declared it was not the duty of the chauffeur to chain the machine to a post, or secure it in such a way that a third person could not start it.[2] But when a statute requires a machine to be locked in a certain manner, the statute must be observed.

9. Turning from the automobile to those who make a business of keeping them for hire, or storing them for others, what are their rights and duties? A garage keeper is not a common carrier, but a private carrier, and must exercise the same care and skill that is applied to a person engaged in a special pursuit in which he serves others for a compensation. A garage is regarded as analogous to a stable, which usually is not a nuisance, though it may become one. If dangerous explosives are stored therein, and im-

[1] Reynolds v. Buck, 127 Iowa. 601.
[2] Burman v. Schultz, 84 N. Y. Supp., 292.

perfectly guarded, such a garage would be a nuisance. On one occasion an action was brought to enjoin or restrain a garage keeper from storing gasolene in his building, which was located in the midst of houses. The building was a wooden structure, surrounded by others of similar character. The keeper had a permit from the city to store a barrel of gasolene in his garage. He kept six or more machines whose tanks usually contained gasolene. The court declared the place to be a nuisance, and ordered him to store the gasolene outside the building and to fill the automobile tanks outside, and to empty them before storing the machines. By so doing the danger was minimized to the point where, under the necessities of the case, the complainants were obliged to endure the remaining risk.

Berry says in his work on this subject: "If the keeping of explosives becomes a nuisance per se, the person so keeping them is liable for injuries caused by their explosion, regardless of the degree of care exercised in their keeping. But if their keeping is not a nuisance per se, then the liability of the person so keeping them for damages due to their explosion depends upon the want of care in the manner or place of keeping them, or some other negligent act. If the storing or keeping more than a certain amount of explosive substances is not contrary to some ordinance or statute, whether or not it is a nuisance depends upon its proximity to other buildings, the amount stored, and all other attending circumstances."[1]

[1] § 203.

10. One who hires an automobile must use reasonable care and skill in operating it. If he does not and injures it, he is liable for all injuries, whether they are caused by himself or by one who is operating the machine for him. The degree of care that he must exercise is the same as that of a man of ordinary prudence and discretion who is operating his own automobile.

The engagement of the hirer is to use the machine only for a particular use. If used in a different way, the owner may sue for the injury thereby caused, even though the hirer be a minor. Thus, says Berry, "if an automobile is hired for one purpose and is used for a different purpose, or if it is hired for a specified period of time, or for a specified journey, and the hirer uses it for a different purpose, or for a longer time, or on a different or longer journey, he is liable for all damages to the automobile arising while it was being used outside of or beyond the terms of the contract of hiring. But a slight immaterial departure from the course agreed upon will not render the hirer liable. Likewise, when he hires a vehicle to drive to and from a place without stopping, mere delay is not sufficient to render him liable." [1]

11. A garage keeper has no lien on an automobile for his keep charge. As such a lien depends on continuous possession, this would be destroyed the first time the owner made use of his machine. Doubtless it is within the legislative province to enact a statute giving him a lien, but it does not exist under a statute

[1] Berry, § 208.

which provides that "a person who makes, alters, repairs, or in any way enhances the value of an article of personal property, at the request or with the consent of the owner, has a lien on such article, while lawfully in possession thereof, for his reasonable charges for the work done, and materials furnished, and may retain possession thereof until such charges are paid."

Again, statutes which give livery-stable keepers a lien for boarding or pasturing animals, or storing vehicles, do not apply to a garage keeper. But he may have a lien by express agreement, and if he takes an automobile to repair he has a lien thereon for a reasonable charge.

12. In purchasing an automobile the parties to the sale may make any agreement they choose not contrary to law. The vendor may warrant the machine, and if this be not fulfilled, the buyer has his rights of action against him. Thus an automobile was warranted for a year, but soon after its delivery it proved to be defective. After repeated attempts to repair it, which were not successful, the purchaser sent it to a garage and notified the seller that he had returned it. Refusing to return the money, the vendor was compelled by law to refund.

13. Berry says that in the absence of an express warranty, there is an implied warranty that it is of merchantable quality and reasonably fit for its intended use. "However, if one buys an automobile on sight after inspecting it and receives the same car that he purchased, there is no such implied warranty."

The law also clearly recognises a distinction between a mere representation and a warranty, which has been elsewhere stated.[1] A warranty is a statement on which the purchaser relies. Thus, one bought an automobile which had been used, for about half the price of a new car. He was told that it had been run about five hundred miles and was in first-class condition and "all right." After using it two months, the crank shaft broke, damaging the engine. In an action to recover the purchase price, it was decided that the seller had not warranted the car; consequently the purchaser had no right to demand and recover his purchase money.

In another case a person bought a second-hand set of tires which had been run about two hundred and fifty miles. The salesman told the purchaser that "the tires were as good as new." Two months afterward one of the tires burst. The salesman's statement was held to be merely an expression of opinion, and not a statement of a present fact amounting to a warranty.

14. If the warranty is broken, the purchaser may employ one of several remedies. If he has paid for the machine and acquired the title, he may bring an action to recover damages; if he has not paid for it, he may rescind the contract and refuse to accept the machine; or he may return it and notify the seller that it is subject to his order. In either case the buyer must act promptly. If he holds the machine beyond

[1] See p. 516.

a reasonable time to examine and test it, his right to rescind is lost.

15. If the warranty be simply implied, the purchaser has a reasonable time for inspection. If he finds any defects, he must refuse to accept it, notify the seller that the warranty is not good, and return the machine. If he does not, he cannot set up any defects as a defense to the payment of the purchase money.

"But a failure to inspect constitutes a waiver of only such defects as were discoverable by a reasonable inspection, and not latent defects. And the purchaser is not bound unless he had an opportunity to inspect. Thus, where one purchased motors under an implied warranty and did not have an opportunity to inspect them, or did not discover defects on reasonable inspection, and they were useless, the seller could not recover the purchase price."[1]

[1] Berry, § 227.

BLANK FORMS

FORMS OF DEED

A Deed Poll of Warranty, in Common Use in New England

KNOW ALL MEN BY THESE PRESENTS, that I, (the grantor) of (residence, town or city, county and state), (occupation), in consideration of (the amount paid) to me paid by (here name the grantee or purchaser, giving in like manner his residence and occupation), the receipt whereof is hereby acknowledged, do hereby give, grant, bargain, sell and convey unto the said (name the grantee, and then describe the premises granted, minutely and accurately): —

To have and to hold the above-granted premises, to the said (name the grantee), his (hers or their) heirs and assigns, to his (or her or their) use and behoof forever. And then, the said (name the grantor), for (myself) and (my) heirs, executors, and administrators, do covenant with the said (name of the grantee), and with his heirs and assigns, that I am lawfully seized in fee simple of the aforegranted premises; that they are free from all incumbrances (if there be any incumbrances, as a mortgage or lien, or right of way, or drain, or air, or light, say excepting, and then describe the incumbrance), that I have good right to sell and convey the same to the said (name of the grantee), and his (or her) heirs and assigns forever as aforesaid; and that I will, and my heirs, executors, and administrators shall, warrant and defend the same to the said (name of the grantee), and his heirs and assigns forever, against the lawful claims and demands of all persons.

In witness whereof, I the said (name of the grantor) and (name of his wife), wife of said grantor, in token of her release of all right and title of or to dower in the granted premises, have hereunto set our hands and seals this.....day of.....in the year of our Lord.....

(Signature) (Seal)

Signed, Sealed, and Delivered in the Presence of

Quitclaim Deed — Short Form

This indenture, made the..... day of....., in the year 19.., between..... (insert occupation and residence), part.... of the first part, and..... (insert occupation and residence), part.... of the second part:

Witnesseth: That the said part.. of the first part, in consideration of..... dollars, lawful money of the United States, paid by the part.. of the second part, .. do.... hereby grant and release unto the said part... of the second part, ..h..heirs and assigns, forever (description of property). Together with the appurtenances and all the estate and rights of the part... of the first part in and to said premises.

To have and to hold the above-granted premises unto the said part... of the second part, ...h...heirs and assigns forever.

In witness whereof, the said part... of the first part, ha... hereunto set ...h...hand.. and seal.. the day and year first above written, in the presence of

(Acknowledgment clause.)

Quitclaim Deed — Another Short Form

In consideration of $100, to me in hand paid by C. D., I, A. B., hereby sell, grant, release, and quitclaim to said C. D., that certain lot (here insert description). To have and to hold the said released premises unto the said C. D., and his heirs and assigns forever.

Witness my hand and seal, this..... day of ..... 19...

(Acknowledgment clause.) A. B. (L. S.)

Quitclaim Deed — Long Form

This indenture, made this..... day of....., in the year of our Lord, 19...., between....., of the first part, and ....., of the second part, witnesseth: That the said part... of the first part, in consideration of the sum of..... dollars, to ....., in hand paid by the said part.. of the second part, the receipt whereof is hereby confessed and acknowledged, ha...bargained, sold, remised, and quitclaimed, and by these presents do.... bargain, sell, remise, and quitclaim unto the said part... of the second part..... .... and to ....., heirs and assigns forever, all ..... together with all and singular the hereditaments and appurtenances thereto belonging, or in anywise appertaining, and the reversion and reversions, remainder and

remainders, rents, issues, and profits thereof, and all the estate, right, title, interest, claim, and demand whatsoever, of the said part... of the first part, either in law or equity, of, in, and to the above-bargained premises, with the said hereditaments and appurtenances, to have and to hold the said ..... to the said part... of the second part, ... heirs and assigns, to the sole and only proper benefit and behoof of the said part ... of the second part, ... heirs and assigns forever.

In witness whereof, the part ... of the first part ha... hereunto set ..... hand ... and seal ...., the day and year first above written.

Sealed and delivered in the presence of

(Acknowledgment clause.)

Warranty Deed — Short Form

This indenture, made the ..... day of ....., 19..., between ..... (insert occupation and residence), of the first part, and ..... (insert occupation and residence), of the second part,

Witnesseth: That the said part... of the first part, in consideration of ..... dollars, lawful money of the United States, paid by the part... of the second part, do .... hereby grant and release unto the said part... of the second part, ...h...heirs and assigns forever (description of land). Together with the appurtenances and all the estate and rights of the part... of the first part in and to said premises.

To have and to hold the above-granted premises unto the said part... of the second part, ...h...heirs and assigns forever.

And that said part... of the first part do .... covenant with said part... of the second part, as follows:

That the part... of the first part will forever warrant the title to said premises.

In witness whereof, the said part... of the first part ha... hereunto set...h...hand... and seal...., the day and year first above written.

In the presence of

(Acknowledgment clause.)

Warranty Deed — Corporation Grantee

This indenture, made the ..... day of ..... 19..., between ....., of the first part, and the corporation known as the ....., of the second part, witnesseth:

That the said part ... of the first part, for and in consideration of the sum of ..... dollars, to ..... in hand paid by the said party of the second part, the receipt of which is hereby acknowledged, ha.... granted, bargained, sold, and conveyed, and by these presents do.... grant, bargain, sell, and convey to the said party of the second part, its successors and assigns, all (description of land).

To have and to hold the said lands and premises above described, with the rights and appurtenances thereunto belonging, to the said party of the second part, its successors and assigns.

And the said part... of the first part hereby covenant... with the said party of the second part, that the said part... of the first part seized in fee and possessed of a good and unincumbered title to the said premises above described, and ha.... full and lawful right to sell and convey the same as aforesaid, and that ..... heirs, executors and administrators shall and will warrant and forever defend the said above described premises to the said party of the second part, its successors and assigns, to the extent of the right, interest, and estate therein as above conveyed, against the said part... of the first part, ... heirs and legal representatives, and against all and every person lawfully claiming or to claim the same, or any part thereof.

In witness whereof, the said part... of the first part ha... hereunto set ..... hand ..... and seal ....., the day and year first above written.

Sealed and delivered in the presence of

(Acknowledgment clause.)

Deed With Full Covenants and Warranty—Short Form

This indenture, made the ..... day of ....., in the year 19..., between ..... (insert occupation and residence), of the first part, and ..... (insert occupation and residence), of the second part,

Witnesseth: That the said part ... of the first part, in consideration or the sum of ..... dollars, lawful money of the United States, paid by the part ... of the second part, do .... hereby grant and release unto the said part ... of the second part, ...h...heirs and assigns, forever (description), together with the appurtenances and all the estate and rights of the part ... of the first part in and to said premises.

To have and to hold the above granted premises unto the said part ... of the second part, ...h...heirs and assigns forever.

And the said part ... of the first part do .. covenant with said part .. of the second part as follows:

First. That the part ... of the first part is seized of the said premises in fee-simple, and has good right to convey the same.

Second. That the part ... of the second part shall quietly enjoy the said premises.

Third. That the said premises are free from incumbrances.

Fourth. That the part... of the first part will execute or procure any further necessary assurance of the title to said premises.

Fifth. That the part ... the first part will forever warrant the title to the said premises.

In witness whereof, the said part ... of the first part ha ... hereunto set ...h...hand.... and seal...., the day and year first above written.

In the presence of

(Acknowledgment clause.)

Mortgage to Secure a Debt, With Power of Sale — Short Form

This Indenture, made the ..... day of ..... in the year ..... between..... (name, residence, and occupation of mortgagor) party of the first part, and ..... (name, residence, and occupation of mortgagee) party of the second part, Witnesseth: That the said party of the first part, in consideration of the sum of (the amount of the debt) to him duly paid before the delivery hereof, has bargained and sold, and by these presents does grant and convey to the said party of the second part, and his heirs and assigns forever, all (here describe the premises minutely and accurately) with the appurtenances, and all the estate, right, and title, and interest of the said party of the first part therein.

This grant is intended as a security for the payment of (here describe the debt) which payments, if duly made, will render this conveyance void. And if default shall be made in the payment of the principal or interest above mentioned, then the said party of the second part, or his executors, administrators, or assigns, are hereby authorised to sell the premises above granted, or so much thereof as will be necessary to satisfy the amount then due with the costs and expenses allowed by law.

In witness whereof, the said party of the first part has hereunto set his hand and seal the day and year first above written.

(Signature) (Seal)

Sealed and delivered in the presence of

STATE OF }
COUNTY OF } ss.

On the.....day of.....in the year one thousand

nine hundred and ..... before me personally came (name of mortgagor) who is known to me to be the individual described in, and who executed the foregoing instrument, and acknowledged that he executed the same, as his free act and deed.

FORMS OF LEASE

Short Form

This agreement, made the.....day of....., in the year of 19...., between....., of the first part, and....., of the second part, witnesseth:

That the said part....of the first part ha...agreed to let, and hereby do..let to the said part..of the second part, and the said part...of the second part ha ..agreed to take, and hereby do... take from the said part..of the first part,....., for the term of....., to commence on the....day of....., 19....., and to end on the.....day of....., 19..... And the said part....of the second part hereby covenant..and agree..to pay unto the said part....of the first part, the.....rent, or sum of....., payable ..... And to quit and surrender the premises, at the expiration of the said term, in as good state and condition as they were in at the commencement of the term, reasonable use and wear thereof, and damages by the elements excepted.

And the said part....of the second part further covenant.. that.....will not assign this lease, nor let or underlet the whole or any part of the said premises, make any alteration therein without the written consent of the said part....of the first part, under the penalty of forfeiture and damages; and that.....will not occupy or use the said premises, nor permit the same to be occupied or used for any business deemed extra hazardous on account of fire or otherwise, without the like consent under the like penalty. And the said part.... of the second part further covenant..that.....will permit the said part....of the first part, or..... agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February, next preceding the expiration of the term, will permit the usual notice of "to let," or "for sale," to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation. And also, that if the said premises or any part thereof, shall become vacant during the said term, the said part....of the first part, or.....representative, may re-enter the same, either by force or otherwise, without being liable to any prose-

cution therefor; and relet the said premises as the agent of the said part....of the second part, and receive the rent thereof applying the same first to the payment of such expenses as..... .....may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the said part....of the second part, who shall remain liable for any deficiency..... And the said part....of the second part hereby further covenant..that if any default be made in the payment of the said rent, or any part thereof, at the times above specified, or if default be made in the performance of any of the covenants or agreements herein contained, the said hiring, and the relation of landlord and tenant, at the option of the said part....of the first part, shall wholly cease and determine; and the said part....of the first part shall and may re-enter the said premises and remove all persons therefrom; and the said part....of the second part hereby expressly waive..the service of any notice in writing of intention to re-enter, as provided for by any law or statute.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of.....
.....
.....

Lease of a House

This indenture, made this.....day of....., 19...., between A. B., of the one part, and C. D., of the other part, witnesseth:

That the said A. B., for and in consideration of the rent, covenants, and agreements hereafter in and by these presents mentioned, reserved, and contained on the part and behalf of the said C. D., his executors, administrators, and assigns, to be paid, observed, done, and performed, hath granted, demised, leased, and to farm let, and by these presents doth grant, lease, and to farm let unto the said C. D., his executors, administrators, and assigns, all that brick house, messuage, or tenement, with all and singular its appurtenances, situate, standing, and being in a certain street or place, called, etc., together with all and singular its appurtenances whatsoever, to the said brick house, messuage, or tenement, and premises belonging, or in anywise appertaining, and therewith heretofore held, used, occupied, and enjoyed by F. G., late occupier thereof.

To have and to hold the said brick house, messuage, or tenement, and all and singular other the premises hereinbefore

granted and demised, or mentioned, or intended to be, with the appurtenances, unto the said C. D., his executors, administrators, and assigns, from the first day of August next ensuing, the day of the date of these presents, for and during, and until the full end and term of five years from the thence next ensuing, and fully to be complete and ended; yielding and paying therefor, yearly, and every year, during the said term, unto the said A. B., his heirs or assigns, the yearly rent of $400 on the.....day of ....., 19...., in every year; the first payment thereof to begin, and to be made, etc., next ensuing the date of these presents.

Provided, always, nevertheless, and it is the true intent and meaning of these presents, and of the said parties hereunto, that if it shall happen that the said yearly rent of..... hereby reserved, or any part thereof, be behind and unpaid by the space of.....next over or after any of the said days, whereon the same ought to be paid as aforesaid, that then, and from thenceforth it shall, and may be lawful to and for the said A. B., his, etc., into and upon the said demised premises, and every, or any part or parcel thereof, with their appurtenances, in the name of the whole, to re-enter, and the same to have again, repossess, and enjoy, as in his or their first or former estate or estates; and him, the said C. D., his executors, administrators, and assigns, and all and every other, the occupier or occupiers of the said demised premises, from thence utterly to expel, remove, and put out; anything in these presents contained to the contrary thereof, in anywise notwithstanding.

And the said C. D., for himself, his executors, administrators, and assigns, doth covenant and grant to and with the said A. B., his heirs and assigns, by these presents, in manner following — that is to say: that he, the said C. D., his executors, administrators, and assigns, shall and will well and truly pay or cause to be paid unto the said A. B., his heirs or assigns, the said yearly rent above reserved, according to the true intent and meaning of these presents, clear of, and over and above all taxes and reprises whatsoever.

And that the said C. D., his executors and administrators, and assigns, shall, and will from time to time, and at all times hereafter, during the said term hereinbefore granted, at his and their own proper costs and charges, well and sufficiently keep in repair the said demised premises, with their, and every of their appurtenances, and also the glass, windows, pavements, privies, sinks, and gutters belonging to the same, in, by, and with all manner of needful and necessary reparations and amendments whatsoever, when, and as often as the same shall require (damages by fire only excepted), and the same premises with all and singu-

lar their appurtenances, being in and by all things so well and sufficiently repaired and kept (except as before excepted), at the end, expiration, or other sooner determination of the said term hereby granted, shall, and will quietly and peaceably leave and surrender, and yield up unto the said A. B., his, etc., in good and sufficient repair and condition (reasonable use and wearing thereof, and damage by fire as aforesaid, only excepted); that he, the said C. D., his executors, administrators, and assigns, shall, and will from time to time and at all times hereafter, during the said term hereby granted, pay and discharge all taxes, charges, and impositions which shall be taxed, charged, imposed, or assessed upon the said messuage, or tenement, or premises, or any part thereof.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

A. B. (L.S.)
C. D. (L.S.)

Lease of Furnished House or Apartment

This indenture, made the.....day of....., one thousand nine hundred and....., between A. B., of..... ....., party of the first part, and C. D., of....., party of the second part, witnesseth:

That the said part....of the first part ha.....letten, and by these presents do....grant, demise, and to farm let, unto the said part....of the second part (describe premises), with the appurtenances, together with the furniture in the said..... ....., a list, or schedule, or inventory of which is in possession of each party and to which reference is hereby made, the said schedule or inventory, having been examined by said parties, approved and signed by them, for the term of....., from the.....day of....., one thousand nine hundred and....., at the.....rent, or sum of....., to be paid in equal monthly (quarterly) payments, in advance, ...And it is agreed that if any rent shall be due and unpaid, or if default shall be made in any of the covenants herein contained, then it shall be lawful for the said part....to re-enter the said premises, and to remove all persons therefrom. And the said part....of the second part hereby covenant..to pay to the said part....of the first part, the said yearly rent, as herein specified. And, also, to pay the regular annual rent or charge, which is or may be assessed or imposed according to law, upon the said premises, for the water, on or before the first day

of August in each year during the term; and if not so paid, the same shall be added to the.....rent then due. And the said part....of the second part further covenant..that .....will not assign this lease, nor let or underlet the whole or any part of the said premises, nor make any alteration therein, without the written consent of the said part.... of the first part, under the penalty of forfeiture and damages, and that.....will not occupy or use the said premises, nor permit the same to be occupied or used, for any business deemed extra hazardous on account of fire or otherwise, without the like consent under the like penalty. And the said part.... of the second part further covenant..that.....will permit the said part....of the first part, or..... agent, to show the premises to persons wishing to hire or purchase, and on and after the first day of February next preceding the expiration of the term, will permit the usual notice of "to let," or "for sale," to be placed upon the walls or doors of said premises, and remain thereon without hindrance or molestation.

And it is further agreed between the parties to these presents, that in case the building or buildings erected on the premises hereby leased shall be partially damaged by fire, the same shall be repaired as speedily as possible, at the expense of the said part....of the first part; that in case the damage shall be so extensive as to render the building untenantable, the rent shall cease until such time as the building shall be put in complete repair; but in case of the total destruction of the premises, by fire, or otherwise, the rent shall be paid up to the time of such destruction, and then and from thenceforth this lease shall cease and come to an end; provided, however, that such damage or destruction be not caused by the carelessness, negligence, or improper conduct of the part....of the second part....., ...agents or servants. And at the expiration of the said term, the said part....of the second part will quit and surrender the premises hereby demised, in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted. And the part.... of the second part further expressly covenant..and agree..to keep the said furniture enumerated in said schedule or inventory, and which is contained in the said.....in good order, and repair at..... ....own proper cost and expense, and also to pay for, replace, or make good any and all damages, breakage, or loss to said furniture (excepting loss or damage by fire to said furniture) and to surrender and deliver up said furniture at the expiration of said term, the ordinary reasonable use and wear of such furniture excepted.

And the said part....of the first part do..covenant that the

said part....of the second part, on paying the said yearly rent, and performing the covenants aforesaid, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

And it is further understood and agreed, that the covenants and agreements, contained in the within lease, are binding on the parties hereto and their legal representatives.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of

.....

[Signatures]

Guarantee Indorsed on Lease

In consideration of the letting of the premises within mentioned to the within-named....., and the sum of $1 to me paid by the said part....of the second part, ... do....hereby covenant and agree, to and with the part....of the first part, above-named, and.....legal representatives, that if default shall at any time be made by the said ....., in the payment of the rent and performance of the covenants contained in the within lease on..... part to be paid and performed, that.....will well and truly pay the said rent, or any arrears thereof, that may remain due unto the said part....of the first part, and also all damages that may arise in consequence of the non-performance of said covenants, or either of them without requiring notice of any such default from the said part....of the first part.

Witness,.....hand..and seal.. ,this.....day of ....., in the year 19.....

(Witness.)

[Signatures]

Lease of Flat

This agreement, made the.....day of....., in the year one thousand nine hundred and....., between ....., part....of the first part, as landlord, and ....., part....of the second part, as tenant.., witnesseth:

That the said part....of the first part ha....agreed to let, and thereby do..let, to the said part....of the second part, as tenant.., and the said part....of the second part, as tenant.. ha....agreed to take, and hereby do.....take from the said part.....of the first part, the.....flat, or floor, on the

.....of the house known and designated as ....., in the city of New York, for the term of....., to commence....., 19...., and to end....., 19...., to be occupied as a strictly private dwelling apartment by.....family, consisting of.....and not otherwise. And the said part....of the second part hereby covenants and agrees to pay unto the said part....of the first part, the.....rent or sum of.....dollars. payable in equal.....payments of $.....each ....., on the.....day of.....

This lease is granted upon the express condition, however, that in case said landlord,.....agents or assigns, deems objectionable or improper conduct on the part of the said tenant..or occupants, said landlord,.....agents or assigns, shall have full license and authority to re-enter and have full possession of said premises, either with or without legal process, on giving five days' previous notice of intention so to do and tendering repayment of the rent paid on account of the unexpired term demised, and upon the expiration of such notice and tender of payment made as aforesaid, said landlord,..... .....agents or assigns, shall be entitled to the immediate possession thereof; and in consideration of the above letting.., the part....of the second part consents that the said landlord, ...agents or assigns, shall not be liable to prosecution or damages for so resuming possession of said premises.

The said premises are also leased upon the further covenents and conditions:

1st. That the tenant shall take good care of the apartment.. and its fixtures, and suffer no waste or injury; shall not drive picture or other nails into the walls or woodwork of said premises, nor allow the same to be done; and shall at.....own cost and expense make and do all repairs required to walls, ceilings, paper, plumbing works, ranges, pipes, and fixtures belonging thereto, whenever damage or injury to the same shall have resulted from misuse or neglect; and shall repair and make good any damage occurring to the building or any tenant thereof, by reason of any neglect, carelessness, or injury to the dumb-waiters, gas, or Croton water-pipes, meters, or faucets, and connections by the tenant..,.....self, or any of.....family or household, or upon the premises leased to said tenant.., and not call on the part....of the first part for any disbursement whatsoever; and at the end or other expiration of the term, shall deliver up the demised premises in good order and condition, damage by the elements excepted; and the said part....of the first part shall not be liable for any damage by leakage of Croton water, or for any cause in any event.

2d. That the tenant..shall not expose any sign, advertisement, illumination, or projection out of the windows or exterior, or from the said building, or upon it in any place, except such as shall be approved and permitted in writing by the owner or..... .....authorised agent.., and the said tenant..shall use only such shades in the front windows of said apartment as are put up or approved by owner.

3d. That the tenant..shall not assign this agreement or underlet the premises, or any part thereof, or make any alterations in the apartments or premises, without the landlord's or agent's consent in writing ; or permit or suffer upon the same, any act or thing deemed extra hazardous on account of fire; and shall comply with all the rules and regulations of the board of health and city ordinances applicable to said premises; and that.....will not use or permit to be used the said premises nor any part thereof for any purpose other than that of a private dwelling apartment for.....and family only.

4th. That the tenant..shall, in case of fire, give immediate notice thereof to the landlord, who shall thereupon cause the damage to be repaired as soon as reasonably and conveniently may be, but if the premises be so damaged that the landlord shall decide to rebuild, the term shall cease, and the accrued rent be paid up to the time of the fire.

5th. That the tenant..shall consult and conform to the regulations governing said house, and to any reasonable alteration or regulation that may be deemed necessary for the protection of the building, and the general comfort and welfare of the occupants of the same.

6th. That in case of default in any of the covenants, the landlord may resume possession of the premises, and relet the same for the remainder of the term, at the best rent that..... can obtain for account of the tenant.., who shall make good any deficiency, and any notice in writing, of intention to re-enter, as provided for in the third section of an act entitled "An act to abolish distress for rent, and for other purposes," passed May 13, 1846, is expressly waived; and it is further expressly agreed, that should the landlord institute dispossess proceedings against the tenant for the non-payment of rent, or for any other reason, such proceedings shall not prejudice the right of the landlord to hold the tenant liable for the rent reserved herein for the full term of this lease, nor the right of the landlord to rent the premises as the agent of the tenant for any unexpired term, after the premises become vacant, from any cause whatsoever, including possession taken by the landlord under a warrant in dispossess proceedings.

7th. That three months prior to the expiration of the term hereby granted, applicants shall be admitted at reasonable hours of the day to view the premises until rented; and the landlord or.....agents, shall also be permitted at any time during the term, to visit and examine them at any reasonable hour of the day, and whenever necessary for any repairs to same or any part of the building.

In witness whereof, the parties to these presents have hereunto set their hands and seals, the day and year first above written.

Sealed and delivered in the presence of

.....

[Signatures]

It is expressly understood and agreed, that the character of the occupancy of said demised premises, as above expressed, is an especial consideration and inducement for the granting of this lease by said landlord to said tenant.., and in the event of a violation by said tenant..of the restriction against subletting the premises, or permitting same to be occupied by parties other than as aforesaid, or of a violation of any other restriction or condition therein imposed, said lease and agreement shall, at the option of said landlord,.....agents or assigns, cease and determine and be at an end, anything hereinbefore contained to the contrary hereof in anywise notwithstanding.

In witness whereof,.....have hereunto set.....hand..and seal..,this.....day of..... 19.....

In presence of

.....

[Signatures]

Agreement for Furnished Rooms

Memorandum. It is agreed by and between E. F. and G. H., as follows, viz.: The said E. F., in consideration of the rent hereinafter mentioned and agreed to be paid to him, hath letten to the said G. H. one room, up two flights of stairs forward, part of the now dwelling-house of the said E. F., situate on..... Street, in the city of....., together with the furniture at present standing therein — that is to say: (Insert furniture). To hold to the said G. H. for the term of two years, to commence from....., 19...., at the yearly rent of $100, to be paid quarterly to the said E. F.

The said G. H., in consideration hereof, agrees to pay the aforesaid yearly rent of $100, at the times above limited for payment thereof; and at the end of the term, or in case of any

default in the payment, shall and will, on the request of the said E. F., or his assigns, immediately yield and deliver up to him or them, the peaceable and quiet possession of the said room, together with the whole furniture he, from the first entrance thereon, there found and possessed, in good and sufficient plight and condition, reasonable wear and tear only excepted.

In witness whereof the parties have signed this agreement, this.....day of....., 19.....

E. F.
G. H.

Landlord and Tenant's Agreement

This instrument, made and executed this..... day of....., 19...., between....., of the....., part..of the first part, and....., of the....., part..of the second part, witnesseth:

That the part..of the first part ha..hereby let and rented to the part..of the second part, and the part..of the second part ha..hereby hired and taken from the part..of the first part, ...for the term of.....years,..... ....to commence the.....day of....., 19...., at the yearly rent of.....dollars, payable ..... And the part..of the second part hereby covenant..to and with the part..of the first part to make punctual payment of the rent.....in the manner aforesaid, and quit and surrender the premises at the expiration of said term, in as good state and condition as they are now in, reasonable use and wear thereof, and damages by the elements excepted, and further covenant..that..he.., the part..of the second part, will not use or occupy said premises for any business or purpose deemed extra hazardous on account of fire.

And further covenant..that..he.., the part..of the second part, will not assign this lease or underlet the said premises, or any part thereof, to any persons whomsoever, without first obtaining the written consent of said part..of the first part, and in case of not complying with this covenant, the part..of the second part agree..to forfeit and pay to the part..of the first part the sum of.....dollars, as and for liquidated damages which are hereby liquidated and fixed as damages and not as a penalty.

This lease is made and accepted on this express condition, that in case the part..of the second part should assign this lease or underlet the said premises, or any part thereof, without the written consent of the part..of the first part, that then the part..of the first part, his heirs or assigns, in his option, shall

have the power and the right of terminating and ending this lease immediately, and be entitled to the immediate possession of said premises, and to take summary proceedings against the part..of the second part, or any person or persons in possession as tenant, having had due and legal notice to quit and surrender the premises, holding over their term.

It is further agreed between the parties, that in case said premises should be destroyed by fire before or during said term, that then this lease is to cease and determine; the rent.....
.....to be paid up to that time.

In witness whereof, the parties have hereunto set their hands and seals the day and year first above written.

In presence of

....
.....

Farm Lease

This indenture, made the.....day of....., in the year of our Lord, 19...., between A. B., of the city of ....., party of the first part, and C. D., of the same place, party of the second part, witnesseth:

That the said party of the first part, in consideration of the rents, covenants, and agreements hereinafter mentioned, reserved, and contained on the part of the said party of the second part, his executors, administrators, and assigns, to be paid, kept, and performed, has demised and to farm let, unto the said party of the second part, his executors, administrators, and assigns, all (insert description), with the appurtenances, unto the said party of the second part, his executors, administrators, and assigns, from the....day of....., 19.., for the term of ten years then next ensuing, yielding and paying therefor, unto the said party of the first part, his heirs or assigns, yearly and every year during the said term hereby granted, the yearly rent or sum of $....., in equal half-yearly payments, to-wit: on the 1st days of October and April in each and every year; provided, that if the yearly rent above reserved, or any part thereof, shall be unpaid on any day of payment whereon the same ought to be paid as aforesaid; or if default shall be made in any of the covenants or agreements herein contained, on the part of the said party of the second part, his heirs or assigns, to re-enter upon the said premises, and the same to have again, as in their first and former estate.

And the said party of the second part does covenant and agree, with the said party of the first part, his heirs and assigns, that he, the said party of the second part, his executors, administra-

tors, or assigns, will yearly and every year during the said term, unto the said party of the first part, his heirs or assigns, the yearly rent above reserved, on the days and in manner limited and prescribed as aforesaid, for the payment thereof, without any deduction or delay. And that the said party of the second part, his executors, administrators, or assigns, will, at his own proper costs and charges, bear, pay, and discharge all taxes, duties, and assessments, as may, during the said term hereby granted, be charged, assessed, or imposed upon the said demised premises. And that on the determination of the estate hereby granted, the said party of the second part, his executors, administrators, or assigns, shall and will leave and surrender unto the said party of the first part, his heirs or assigns, the said demised premises in as good state and condition as they are now in, ordinary wear and damages by the elements excepted.

And the said party of the first part does covenant and agree, with the said party of the second part, his executors, administrators, and assigns, that the said party of the second part, his executors, administrators, and assigns, paying the said yearly rent above reserved, and performing the covenants and agreements aforesaid on his part, the said party of the second part, his executors, administrators, and assigns, shall and may at all times during the said term hereby granted, peaceably have, hold, and enjoy the said demised premises, without any manner of trouble or hindrance of or from the said party of the first part, his heirs or assigns, or any other person or persons whomsoever.

In witness whereof, the parties to these presents have hereunto set their hands and seals.

Sealed and delivered in the presence of

.....

A. B. (L. S.)
C. D. (L. S.)

Agreement Concerning Party Wall

This agreement, made this.....day of..... 19...., by and between J. M. and W. C., of the city of..... ....., witnesseth: That, whereas, the said W. C. is the owner of the house and lot on the south side of.....Street, second lot east of.....Street, and the said J. M. is the owner of the lot adjoining the same next easterly thereof, on which said lot there now stands a party wall on a line parallel with..... Street; and forty-four feet easterly from said.....Street; and, whereas, the said J. M. has erected his dwelling-house several feet (one story) higher than the said W. C., whereby greater advantage may accrue to the said J. M. from said party wall.

Now, therefore, the said W. C., in consideration of the sum of $1, to him in hand paid, the receipt whereof is hereby acknowledged, doth grant, covenant, promise, and agree with the said J. M., that he may peacefully and lawfully enjoy such party wall, to himself, his heirs, and assigns, the said W. C. reserving to himself the right to use the said portion of the party wall built by the said J. M., whenever he may wish to build higher than his house now is.

It is further mutually understood and agreed, between the respective parties, that this agreement shall remain so long as the houses last, and shall pass to the heirs and assigns of the respective parties to these presents.

Witness our hands and seals, the day and year first above written.

J. M. (L. S.)
W. C. (L. S.)

Assignment of Lease

Know all men by these presents, that I, W. P., the within-named lessee, for and in consideration of $50, to me in hand paid by V. O., of the town of Westerlo, County of Albany, at and before the sealing and delivery hereof, the receipt whereof I do hereby acknowledge, have granted, assigned and set over, and by these presents do grant, assign and set over, unto the said V. O., his executors, administrators, and assigns, the within indenture of lease, and all that house and farm therein described, with the appurtenances; and also my estate, right, title, term of years yet to come, claim and demand whatsoever, of, in, to, or out of the same. To have and to hold the said house and farm, and the appurtenances thereof unto the said V. O., his executors, administrators, and assigns, for the residue of the term within mentioned, under the yearly rent and covenants within reserved and contained, on my part and behalf to be done, kept and performed.

Witness my hand and seal, this June 20, 19...

W. P. (L. S.)

(Acknowledgment.)

MISCELLANEOUS FORMS

Notice to Owners of Strays

To....., Esq.:

You are hereby notified, pursuant to section 123 of the Town Law, that the undersigned, a resident of the town of..... ....., in the county of....., has upon his enclosed

lands (or, in pound, as the case may be), the following animals belonging to you (here describe them), and that the same are being held as strays (or, beasts doing damage, as the case may be).

Dated, this.....day of....., 19.....

.....

NOTICE TO BUILD OR REPAIR DIVISION FENCE

To....., Esq.:

You are hereby notified and required, pursuant to section ....., of the Town Law, to build and maintain (or, repair) your portion of the division fence between your lands and the lands of the undersigned, beginning (state where fence is to be built or repaired) within one month after receiving this notice, in default of which I shall cause the same to be built (or, repaired) at your expense.

Dated, this.....day of....., 19...

.....

CERTIFICATE OF APPORTIONMENT OF DIVISION FENCE

COUNTY OF.....
} ss.:
Town of.....

Whereas, a dispute has arisen between.....and ....., adjoining owners of land in said town, concerning the apportionment of the division fence between said lands; now, therefore, we, the undersigned fence viewers of said town, duly chosen to hear and determine the dispute, pursuant to section....., of the Town Law, after giving due notice to said owners of the time and place of this meeting, and having viewed the premises, heard the parties and the evidence produced, do hereby determine that the following is a correct description of the said division fence (describe it): that the said.....shall maintain and keep in repair all that portion of the fence (here describe it), and that..... shall maintain and keep in repair all that portion of the fence (here describe it), and that each pay one-half (or, as the case may be) of the costs and expenses of this proceeding, which are $.....

Dated, this.....day of....., 19....

.....

.....

Fence viewers.

Subscription to Build a Church Edifice

Whereas, the trustees of the church corporation, known as the "Church of the Puritans," are about erecting a church edifice for such corporation; now, we, the undersigned, for the purpose of such erection, hereby agree to and with such trustees and to and with each other, to pay to B. B., the treasurer of said corporation, the several sums by us set opposite our several names, for the purpose of such erection, and we hereby authorise and direct the said trustees to expend such sums in the erection of the same. The said sums are to be paid to the said treasurer on or before the 1st day of March, 1900.

NAMES	AMOUNT
A B.	$600
C. C.	400

Subscription in the Form of a Contract

This memorandum of subscription agreement, made this .....day of....., in the year 19...., between ....., a corporation organized under the Membership Corporation Law of the State of New York (or, society, or, committee, as the case may be), party of the first part, and John Doe, and all other persons whose names are subscribed hereto, parties of the second part:

Whereas, the parties of the second part are desirous and deem it to their advantage to have a church building (or, whatever the object of the subscription may be) erected at....., in the county of....., State of....., and the party of the first part has agreed to erect said building at said place at a cost not to exceed the sum of.....dollars;

Now, this agreement witnesseth:

In consideration of the mutual and reciprocal obligations herein contained the parties hereto agree and stipulate as follows:

First. The party of the first part hereby agrees to erect, or cause to be erected, a church building at....., in the county of....., State of New York, according to plans and specifications to be approved by the board of trustees of the party of the first part (or, other persons, as the case may be), at a cost not to exceed the sum of.....dollars, and have the same ready for occupancy within.....years from the time the entire amount herein provided for is in good faith subscribed by the parties of the second part hereto, as hereinafter provided.

Second. The parties of the second part in consideration of the party of the first part undertaking to erect, or cause to be erected, the building, as specified in the foregoing paragraph of this agreement marked "First," hereby agree, and agrees, each for himself or herself, his or her heirs, executors, and administrators, to pay to the party of the first part the sums set opposite their respective names hereunto subscribed, on the dates and according to the terms herein expressed.

Third. It is further agreed, that this contract shall not be binding on either party hereto until at least the sum of..... dollars is subscribed, provided, however, that neither the party of the first part nor any party of the second part shall have power to cancel this agreement as to it, him, or her, prior to the .....day of....., 19....., it being the object of this proviso that the parties hereto shall have until said date to secure subscriptions amounting to the entire sum of..... dollars; and if subscriptions for such sum are secured not later than said.....day of....., 19...., none of the parties hereto shall have power in any event to cancel this agreement as to it, him, or her.

Fourth. It is further agreed, that if the entire sum of..... dollars is not subscribed on or before the.....day of..... ....., 19...., then any party hereto shall have power to cancel this contract as to it, him, or her, by giving a written notice, personally or by mail, of its, his, or her intention so to do; if by the party of the first part to each of the parties of the second part, addressed to him or her at his or her last ascertainable post-office address; if by any party of the second part, by giving a like notice to the board of trustees of the party of the first part.

Fifth. It is further agreed, that within...days from the time the total amount of.....dollars, as herein provided, is subscribed, the party of the first part can call for the payment of at least 25 per cent. of the respective subscription made by the parties of the second part hereto, and may call for any part, or the whole, of the remainder thereof at any time after..... months from the first call, as hereinbefore provided.

In witness whereof, the party of the first part has caused this instrument to be subscribed in its corporate name and its seal to be hereto affixed, and the parties of the second part have hereto set their respective hands and seals and the amounts and dates of their subscriptions.

NAMES	DATES	AMOUNTS
	(L.S.)	
	(L.S.)	
	(L.S.)	
	(L.S.)	

(If the subscription is to support a pastor, the agreement may be put in the form of an undertaking on the part of the corporation, society, or committee, to secure to the pastor the sum agreed upon, the subscribers agreeing to reimburse the corporation, society, or committee in the sum which each subscribes. In any event, to be binding, the subscription should be in the form of an undertaking on the part of the corporation, society, or committee, to which the payment is to be made directly to do some act which is the consideration for the subscription. The form given above can be easily changed to meet the various requirements of such documents.)

Bill of Sale

Know all men by these presents, that....., of the first part, for and in consideration of the sum of....., lawful money of the United States, to.....in hand paid, at or before the ensealing and delivery of these presents by....., of the second part, the receipt whereof is hereby acknowledged, ha....bargained and sold, and by these presents do grant and convey, unto the said part.....of the second part,.....executors, administrators, and assigns (description of property; or if detailed description is contained in schedule annexed, say, the goods and chattels particularly described in a schedule hereunto annexed and made a part of this instrument), to have and to hold the same unto the said part.....of the second part,.....executors, administrators, and assigns forever. And.....do....for .....heirs, executors, administrators, covenant and agree, to and with the said part.....of the second part, to warrrant and defend the sale of the said property..... hereby sold unto the said part.....of the second part,..... .....executors, administrators, and assigns, against all and every person and persons whomsoever.

In witness whereof,.....have hereunto set..... hand.....and seal.....the.....day of..... in the year one thousand nine hundred and.....

Sealed and delivered in the presence of

(Acknowledgment clause.)

Agreement for Building

Articles of agreement, made this .....day of..... 19...., between....., of the first part, and..... ....., of the second part.

First. The said part.....of the second part do....hereby,

for.....heirs, executors, administrators, covenant promise, and agree to and with the said part.....of the first part,.....executors, administrators, or assigns that....., the said part.....of the second part, ...executors, administrators, shall and will, for the consideration hereinafter mentioned, on or before the..... ....., well and sufficiently erect and finish the new building ....., agreeable to the drawings and specifications made by.....and signed by the said parties and hereunto annexed, within the time aforesaid, in a good, workmanlike, and substantial manner, to the satisfaction, and under the direction of the said....., to be testified by a writing or certificate under the hand of the said....., and also shall and will find and provide such good, proper, and sufficient materials, of all kinds whatsoever, as shall be proper and sufficient for the completing and finishing all the....., and other works of the said building..mentioned in the..... specification.., for the sum of..... And the said part.....of the first part do....hereby, for....., heirs, executors, and administrators, covenant, promise, and agree, to and with the said part.....of the second part,..... ....., executors and administrators, that....., the said part....of the first part,.....executors, or administrators, shall and will, in consideration of the covenants and agreements being strictly performed and kept by the said part....of the second part, as specified, well and truly pay, or cause to be paid, unto the said part....of the second part, ...executors, administrators, or assigns, the sum of.....dollars, lawful money of the United States of America,.....in manner following:.....provided, that in each of the said cases, a certificate shall be obtained and signed by the said.....

And it is hereby further agreed by and between the said parties:

First. The specifications, conditions, and the drawings are intended to co-operate, so that any works exhibited in the drawings and conditions, and not mentioned in the specifications, or vice versa, are to be executed the same as if it were mentioned in the specifications and set forth in the drawings, to the true meaning and intention of the said drawings, conditions, and specifications, without extra charge whatsoever. The specifications, drawings, and conditions are hereby made a part hereof.

Second. The contractor, at his own proper costs and charges, is to provide all manner of materials and labour, scaffolding, implements, moulds, models, and cartage of every description, for the due performance of the several erections.

Third. Should the owner, at any time during the progress of the said building....request any alteration, deviation, additions or omissions, from the said contract, he shall be at liberty to do so, and the same shall in no way affect or make void the contract, but will be added to or deducted from the amount of the contract, as the case may be, by a fair and reasonable valuation.

Fourth. Should the contractor, at any time during the progress of the said works, refuse or neglect to supply a sufficiency of materials or workmen, the owner shall have the power to provide materials and workmen, after three days' notice in writing being given to finish the said works, and the expense shall be deducted from the amount of the contract.

Fifth. Should any dispute arise respecting the true construction or meaning of the drawings or specifications, the same shall be decided by....., and.....decision shall be final and conclusive; but should any dispute arise respecting the true value of the extra work, or of the works omitted, the same shall be valued by two competent persons....., one employed by the owner, and the other by the contractor....and those who shall have the power to name an umpire, whose decision shall be binding on all parties.

Sixth. The owner shall not, in any manner, be answerable or accountable for any loss or damage that shall or may happen to the said works, or any parts thereof respectively, or for any of the materials or other things used and employed in finishing and completing the same (loss or damage by fire excepted).

Seventh. The contractors, and each of them, to be responsible for each and every violation of the city ordinances caused by the obstruction of streets and sidewalks, and shall hold the owner harmless from any and all damages or expense arising therefrom; said contractors, and each of them, shall be responsible for, and shall save and keep the owner harmless and indemnified from and against all liability by reason of injury or damage to person or property in consequence of obstructions of the street or sidewalk, or of any materials or other thing therein or thereon, if any, and from any excavation or want of light or other proper guard or warning.

Eighth. The contractors, and each of them, to take all necessary and proper steps to make, and to properly, carefully, and skilfully make all excavations without injury to adjoining buildings and property, and to save and keep the owner harmless and indemnify him from and against all liability and damage by reason of excavations, if any, and failure to properly, carefully and skilfully make the same, and to properly, carefully, and skilfully do and perform all the work contracted for.

Ninth. The contractors, and each of them, to save and keep the building referred to in this contract, and the lands on which it is situated free from any and all mechanics' liens, and other liens, by reason of his work or any material or other thing used therein; and if the contractors, or either of them, do not, the owner may retain sufficient of the contract price to pay the same, and all costs by reason of or in consequence thereof, and may pay said lien or liens, if any, and costs, and deduct the amount thereof from the contract price.

In witness whereof, the said parties to these presents have hereunto set their hands and seals, the day and year above written.

In presence of

(Acknowledgment clause.)

Notice of Mechanic's Lien

To....., the County Clerk of the County of....., ..., in the State of New York:

Take notice, that....., resident....of the..... .....of....., in the county of....., claimant..ha....a claim against.....of the..... .....of....., in said county of....., for the sum of.....dollars, and interest from the ..... day of....., 19...., for.....

That the name..of the person..by whom the claimant..... w.....employed and to whom....he.....furnished .....such materials is.....

That the amount of the said labour and service performed and the materials.....furnished is as before stated; that the nature thereof is as follows: .....

That all the work for which this claim is made has..... been actually performed.....

That all materials for which this claim is made have..... been actually furnished.....

That the said labour and service have.....been performed, and such materials have been used and are to be used in erecting, altering, repairing, and improving the house.., building.., building lot.., premises, parcel, and farm of land and appurtenances to such house.., building.., and building lot..situate upon the lot.., premises, parcel, and farm of land hereinafter described on.....street, in said..... of .....

That the first item of work done and materials furnished was performed and furnished on.....day of....., 19...., and the last item thereof on.....day of....., 19..... That ninety days have not elapsed since and after the.....

dating from the last item of work performed, and dating from the last item of material furnished.

That the name..of the owner.., lessee.., general assignee.., or person ..in possession of the premises against whose interest a lien is claimed is.....

That such labour and services were performed, and such materials were furnished with the consent of said owner.., ..h..agent and the contractor, subcontractor, and a person contracting with such owner..to erect, alter, and improve such house.., building.....upon such lot, premises, parcel and farm of land.

That a description of the property to be charged with such lien is as follows: .....

The claimant..ha....and claim..a lien, for the principal sum of.....dollars,.....and interest from the .....day of....., 19...., for the price and value of such labour and service and materials, upon such house.., building.., and appurtenances, and upon the lot, premises, parcel, and farm of land upon which the same stands..... pursuant to the statute in such case made and provided, to the extent of the right, title, and interest at the time existing of such owner, whether owner in fee or of a less estate or whether a lessee for a term of years, or vendee in possession under a contract existing at the time of the filing of this notice of lien or of the owner of any right, title, or interest in such estate which may be sold under an execution under the general provisions of the statutes in force in the State of New York relating to liens of judgment and enforcement thereof, and also to the extent of the interest which the owner..may have assigned by a general assignment for the benefit of creditors within thirty days prior to the time of filing this notice of lien and to the extent allowed by law.

.....County of....., *ss.*:

....., being sworn, says,..he is.....the person.....making the foregoing claim, and that the statements therein contained are true to....h....knowledge of information and belief.

Subscribed and sworn to before me, this .....day of....., 19.... }

Assignment of Policy of Insurance

Know all men by these presents, that I, P. B., of the village of Coxsackie, for and in consideration of $25, to me in hand paid by R. C. of the same place, the receipt whereof is hereby

acknowledged, have sold, assigned, transferred, and set over, and by these presents do sell, assign, transfer, and set over, unto the said R. C. the policy of insurance, known as policy No. 23,685 of the Indemnity Insurance Company, and all sum and sums of money, interest benefit and advantage whatsoever, now due, or hereafter to arise, or to be had or made by virtue thereof, to have and to hold the same unto the said R. C., and his assigns forever.

In witness whereof, I have hereto affixed my hand, this June 20, 19... (P. B.)

(Acknowledgment.)

Assignment of Policy as a Security

(As in the last form to "R. C. and his assigns forever," and then add as follows:) This assignment is hereby made to secure the said R. C., against any loss and damage which he may incur or sustain by reason of his, R. C's., indorsement of a promissory note made by the said P. B., dated April 10, 1898, for the sum of $100, payable three months after date, the payment of which note, at maturity, by the said P. B., will render this assignment void, but otherwise to be of full force and virtue.

In witness, etc., (as in the last to the end).

(Acknowledgment.)

Consent of Assignment of Policy to be Signed by an Officer of the Company

Office of the Albany Insurance Co.
Albany, April 9, 19...

The Albany Insurance Company hereby consent to the assignment of the within policy of insurance, by the insured therein named, subject to all the conditions and provisions in said policy expressed, to R. C.

S. G., Secretary, etc.

Assignment of Patent Right

Whereas, letters-patent, bearing the date the 10th of January, 1898, were granted and issued by the Government of the United States, under the seal thereof, to R. K., of the town of Coeymans, of the State of New York, for (here state the nature of the invention as in the patent) a more particular and full description

thereof is annexed to the said letters-patents in a schedule; by which letters-patents the full and exclusive right and liberty of making and using the said invention, and of vending the same to others to be used, was granted to the said R. K., his heirs, executors, and administrators, or assigns, for the term of seventeen years, from the same date.

Now, know all men by these presents, that I, the said R. K., for and in consideration of the sum of $50, to me in hand paid, the receipt whereof is hereby acknowledged, have granted, assigned and set over, and by these presents do grant, assign, and set over unto L. P., of the said town of Coeymans, his executors, administrators, and assigns, forever, the said letters-patent, and all my right, title and interest in and to the said invention, so granted unto me: to have and to hold the said letters-patent and invention, with all benefit, profit and advantage thereof, unto the said L. P., his executors, administrators, and assigns, in as full, ample, and beneficial manner, to all intents and purposes, as I, the said R. K., by virtue of the said letters-patent, may or might have or hold the same, for and during all the rest and residue of the term for which said letters-patent are granted.

In witness whereof, I have hereto affixed my hand and seal, this 10th day of June, 19...

R. K. (L. S.)

In the presence of
A. B.
C. D.
(Acknowledgment.)

Assignment of Demand for Wages or Debt

In consideration of $100, to me in hand paid, by M. D., of the City of Troy, the receipt whereof is hereby acknowledged, I, L. C., of the same place, have sold, and by these presents do sell, assign, transfer, and set over, unto the said M. D., a certain debt due from N. E., amounting to the sum of $150, for work, labour, and services by me performed for the said N. E., (or, for goods sold and delivered to the said N. E.,) with full power to sue for, collect, and discharge, or sell and assign the same, in my name, or otherwise but at his own cost and charges. and I do hereby covenant that the said sum of $150 is justly due as aforesaid, and that I have not done and will not do, any act to hinder or prevent the collection of the same by the said M. D.

Witness my hand this April 9, 19...

L. C.

(Acknowledgment.)

Assignment of Mortgage

This instrument, made this ..... day of ..... 19..., between ....., of the first part, and ....., of the second part, witnesseth: That the part ... of the first part, for a good and valuable consideration, to ..... in hand paid by the part ... of the second part, ha... sold, assigned, transferred, and conveyed, and do .... hereby sell, assign, transfer, and convey to the part ... of the second part, a certain mortgage, bearing date the ..... day of ..... 19..., made by ....., recorded in the clerk's office of ..... county, in liber....., of mortgages, at page ....., on the ..... day of ....., 19..., at .....o'clock ..... m., together with the bond accompanying said mortgage, and therein referred to, and all sums of money due and to grow due thereon. And the part.... of the first part hereby covenant that there is ..... due on the said bond and mortgage the sum of .....

In witness whereof, the part ... of the first part ha .... hereunto set ..... hand .... and seal ..... the day and year first above written.

(Assignment clause.)

Assignment of Bond and Mortgage—Shorter Form

Mortgage dated the 3d day of April, 1897, executed by A. B., and wife, to C. D., recorded in the Schenectady county clerk's office, in book No. 300 of Mortgages, page 10, etc. Bond bearing date the day aforesaid, executed by A. B., to C. D., aforesaid, in the penal sum of $1,000 conditional for the payment of $500 in five years from the date thereof, with interest semi-annually.

In consideration of $500, to me paid by E. F., I do hereby sell, assign, transfer, and set over unto the said E. F., the bond and mortgage above described; hereby authorising him to collect and enforce payment thereof, in my name, or otherwise, but at his own costs and charges. And I do hereby covenant, that the sum of $500, with interest from the 3d day of April, 1898, is now due and owing on the said bond and mortgage, and that I have good right to sell the same. Witness my hand and seal, this 10th day of June, 19...

C. D. (L. S.)

Assignment of Contract as Collateral Security

Whereas, I, H. B., of the city of Schenectady, have made a written contract with L. T., of the city of Utica, for the purchase

of certain real estate, in the said contract mentioned and described, said contract bearing date December 24, 1898, and whereas, W. W., of the city of Schenectady, has loaned me the sum of $235, and for which I have given my note, dated June 10, 1898, payable in six months from the date thereof, with interest. Now, in consideration of $1, to me in hand paid and to secure the payment of the said note, I hereby sell, and assign to the said W. W., the said contract, and all the rights, value, interest, benefit and property therein contained, and hereby authorise and empower the said W. W., upon his performance of the conditions in the said contract mentioned, to demand and receive of the said L. T., the deed covenanted to be given in the said contract, upon condition that if the said note is fully paid at maturity, then this assignment and everything therein contained shall cease and be void, otherwise to be of full force and virtue.

Schenectady, June 15, 19...

H. B. (L. S.)

Bond, to be Secured by a Mortgage

Know all men by these presents, That I (name of obligor) of .....in the County of.....and State of..... am held, bound, and obliged unto (name of obligee) of..... in the County of.....and State of..... in the sum of (penalty usually twice as much as the actual debt) to be paid to the said (the obligee) his executors, administrators, heirs, or assigns, and to this payment I hereby bind myself, my heirs, executors and administrators, firmly by these presents.

Sealed with my seal, this..... day of .....in the year.....

The condition of the above obligation is such that if I the said (name of the obligor) or my heirs, executors, or administrators, shall pay or cause to be paid unto the said (name of the obligee) his heirs or assigns the sum of (here insert the amount of the debt or sum to be secured) on the.....day of.....in the year....., with interest at.....per cent., payable six months from the date hereof, and every six months afterwards, until the said sum is paid, then the above obligation shall be void and of no effect, and otherwise it shall remain in full force. And I further agree and covenant, that if any payment of interest be withheld or delayed for.....days after such payment shall fall due, the said principal sum and all arrearage of interest thereon shall be and become due immediately on the expiration of.....days, at the option of said (name of the obligee) or his executors, administrators, or assigns.

(Witness.) (Signature.) (Seal.)

Bonds

Know all men by these presents, that.....held and firmly bound unto....., in the sum of..... ....dollars, to be paid to the said.....or to..... .....certain attorney, executors, administrators, or assigns .....

For which payment, well and truly to be made,..... bind.....and.....heirs, executors or administrators, jointly and severally, firmly by these presents.

Sealed this.....day of....., in the year of our Lord, 19.....*

The condition of this obligation is such, that if the above bounden.....heirs, executors or administrators, shall do well and truly pay or cause to be paid unto the above-named ....., certain attorney, executors, administrators or assigns, the sum of....., without fraud or delay, then the preceding obligation to be void, otherwise to remain in full force and virtue.

Sealed and delivered in the presence of

(Acknowledgment clause.)

Bond to Execute a Conveyance

(As in the first form to the*, and then as follows):

The condition of this obligation is such, that if the said A. B., on or before the.....day of.....next ensuing the date hereof, or, in case of his death before that time, if the heirs of the said A. B., within three months next after his decease, if such heirs shall be then of full age, or, if within age, then within three months after such heirs shall be of full age, shall and do, upon the reasonable request, and at the charges of the said C. D., his heirs or assigns, make, execute, and acknowledge, or cause so to be, all and every such deed or deeds, conveyance or conveyances whatsoever, which shall be needful for conveying and confirming unto the said C. D., his heirs and assigns, a good, absolute and indefeasible estate of inheritance in fee-simple, clear of all encumbrances, of and in a certain messuage, etc., with the appurtenances; and if, in the meantime, and while and until the same deed or deeds shall be executed, the said A. B., his heirs and assigns, shall and do permit and suffer the said C. D., his heirs and assigns, peaceably and quietly

to have, hold, and enjoy the same messuage and tract of land, then the above obligation to be void, or else it shall be and remain in full force and virtue.

A. B. (L. S.)

Bond for Payment of Money at Different Times

(As in the first form to the*, and then as follows):

The condition of this obligation is such, that if the above-bounden A. B., his heirs, executors, and administrators, or any of them, shall well and truly pay, or cause to be paid, unto the above-named C. D., his executors, administrators, or assigns, the just and full sum of $1,000, lawful money, as aforesaid, in manner following, to wit: $300 part thereof, on the..... ....day of.....next ensuing the date hereof; $300 more thereof on the.....day of....., the next following; and $400, the residue, and in full payment thereof, on the.....day of....., which will be in the year of our Lord, ... ; then this obligation to be void; but if default shall be made in payment of any or either of the said sums on the days and times hereinbefore mentioned and appointed for payment thereof, respectively, then this bond shall remain in full force and virtue.

A. B. (L. S.)

Bond of Indemnity to a Surety in a Bond

(As in the first form to the*, and then as follows):

The condition of this obligation is such, that whereas the above-named C. D., at the special instance and request of the above-bounden A. B., and for his debt, together with and as well as he, the said A. B., are held and firmly bound unto one G. H., in and by an obligation bearing even date herewith, in the penal sum of $3,000 conditioned for the true payment of $1,500, according to the terms and conditions therein expressed, if, therefore, the said A. B., his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, unto the above-named G. H., his executors, administrators, or assigns, the sum or sums in the said bond mentioned, and at the time when they respectively become due, in the discharge of the obligation; and shall from time to time, and at all times hereafter save, defend, and keep harmless, and indemnify the said C. D., his heirs, executors, and administrators, and his and their goods and chattels, lands and tenements, of and from the said obligation, and of and from all actions, costs, and damages, for or by reason

thereof; then this obligation to be void, or else to remain in full force and virtue.

A. B. (L. S.)

Bond of Indemnity on Paying Lost Note

Know all men by these presents, that we, C. D. and M. N., are held and firmly bound unto E. F. and G. F., in the sum of $1,000, lawful money of the United States of America, to be paid to the said E. F. and G. F., their executors, administrators, or assigns; for which payment well and truly to be made, we bind ourselves, our and each of our heirs, executors, and administrators, jointly and severally, firmly by these presents.

Sealed with our seals. Dated this.....day of ....., 19.....

Whereas, the above-named E. F., by his promissory note, signed by him for the said G. F., his father, dated the..... ....day of....., 19...., did promise to pay unto Y. Z., or order, $400, sixty days after date, for value received; and such said note was afterward indorsed by the said Y. Z. and others, and became the property of A. B., of Rome, as the said A. B. avers; and, whereas, the said A. B. alleges he sent the said note by the mail, on the 5th day of April last, to the above-bounden C. D., to be delivered by him for his, the said A. B.'s use; which mail being robbed, and, the said note not having been offered for payment, it is apprehended the said note was stolen out of the said mail or otherwise lost; and, whereas, the said E. F. and G. F. have on the day of the date hereof, at the request as well of the said A. B. as of the said C. D., and upon his, the said C. D., promising to indemnify the said E. F. and G. F., and deliver up to them the said note to be canceled, when found, paid the said C. D. the sum of $400, in full satisfaction and discharge of the said note (the receipt whereof the said C. D. does hereby acknowledge); the condition, therefore, of the above written obligation is such, that if the said C. D., his heirs, executors, or administrators, or any of them, do and shall, from time to time, and at all times hereafter, save, defend, keep harmless and indemnified, the said E. F. and G. F., their executors and administrators, of, from, and against the said note of $400, and of and from all costs, damages, and expenses that shall or may happen to arise therefrom, and also deliver or cause to be delivered up the said note, when, and so soon as the same shall be found to be canceled; then this obligation to be void, otherwise to be of full force and virtue.

C. D. (L. S.)
M. N. (L. S.)

Contract of Co-Partnership

Articles of co-partnership, made this.....day of....., 19...., by and between E. D. and H. W. both of the city of....., witnesseth that:

The said parties hereby agree to form, and do form a co-partnership, for the purpose of carrying on the general produce and commission business on the following terms and articles of agreement, to the faithful performance of which they mutually engage and bind themselves, each to the other.

The style and name of the co-partnership shall be D. and W., and shall commence on the.....day of....., 19...., and continue for the period of five years.

Each of the said parties agrees to contribute to the funds of the partnership the sum of $3,000 in cash, which shall be paid in, on or before the.....day of....., 19...., and each of said parties shall devote and give all his time and attention to the business, and to the care and superintendence of the same.

All profits which may accrue to the said partnership shall be divided equally, and all losses happening to the said firm, whether from bad debts, depreciation of goods, or any other cause or accident, and all expenses of the business shall be borne by the said parties equally.

All the purchases, sales, transactions, and accounts of the said firm shall be kept in regular books, which shall be always open to the inspection of both parties and their regular representatives respectively.

An account of stock shall be taken, and an account between the parties shall be settled as often as once a year, and as much oftener as either partner may desire, and in writing request.

Neither of the said parties shall subscribe any bond, sign or indorse any note of hand, accept, sign, or indorse any draft or bill of exchange, or assume any other liability, verbal or written, either in his own name or in the name of the firm, for the accommodation of any other person or persons whatsoever, without the consent in writing of the other party; nor shall either party lend any of the funds of the co-partnership without such consent of the other partner.

No large purchase shall be made, nor any transaction out of the usual course of the business shall be undertaken by either of the partners, without previous consultation with, and the approbation of, the other partner.

Neither shall withdraw from the joint stock, at any time, more than his share of the profits of the business then earned nor shall either party be entitled to interest on his share of the

capital; but if, at the expiration of the year, a balance of profits be found due to either partner, he shall be at liberty to withdraw the said balance, or to leave it in the business, provided the other partner consent thereto, and in that case be allowed interest on the said balance.

At the expiration of the aforesaid term, or earlier dissolution of this co-partnership, if the said parties, or their legal representatives, cannot agree in the division of the stock then on hand, the whole co-partnership effects, except the debts due to the firm, shall be sold at public auction, at which both parties shall be at liberty to bid and purchase like other individuals, and the proceeds shall be divided, after payment of the debts of the firm, in the proportions aforesaid.

For the purpose of securing the performance of the foregoing agreements, it is agreed, that either party, in case of any violation of them, or either of them, by the other, shall have the right to dissolve this co-partnership forthwith, on his becoming informed of such violation.

In witness whereof, we, the said E. D. and H. W., have hereto set our hands, the day and year first above written.

Executed and delivered in the presence of
(Acknowledgment.)

E. D.
H. W.

General Letter of Credit

A. B. & Co., of No.....Street, New York City, will accept and pay at maturity any draft or drafts, at sixty days' sight, issued by C. D., of....., to the extent of $30,000, and hereby guarantee the due acceptance and payment of any draft issued in pursuance of the above credit.

Dated,....., 19.....

(Signature.)

Special Letter of Credit

A. B. & Co.....:

Gentlemen.—We will be responsible to you for goods sold to C. D., of....., to an amount not exceeding.....dollars (or, for cash advanced to C. D., of..... not exceeding.....dollars), (or, for credit secured by you to C. D.. of....., in the purchase of (describe the kind of goods), not exceeding the sum of..... dollars) at any time before....., 19...., unless this letter is revoked prior to said date; and providing you send notice to us by mail within ten days of the granting of such

credit or making such payment, and also in case said C. D. should default in making payment of any part of any debt created by reason of this agreement when such payment shall become regularly due, then notice of such default shall be sent by mail to us within five days of such default.

Dated,..... 19..... (Signature.)

Mortgage on Goods and Chattels

Know all men by these presents, that A. B., residing at..... ....., of the first part, for securing the payment of the..... ....., hereinafter mentioned, and in consideration of the sum of $1, to.....in hand paid, at or before the ensealing and delivery of these presents, by C. D., of the second part, the receipt whereof is hereby acknowledged, ha....granted, bargained, sold, and assigned, and by these presents do.... grant, bargain, sell, and assign unto the said part....of the second part, all.....now remaining and being..... .....

To have and to hold, all and singular, the goods and chattels above bargained and sold, or intended so to be, unto the said part....of the second part,.....executors, administrators, and assigns forever. And the said part....of the first part, for.....heirs, executors, and administrators, all and singular, the said goods and chattels above bargained and sold unto the said part....of the second part,..... executors, administrators, and assigns, against the said part.... of the first part, and against all and every person or persons whomsoever shall and will warrant, and by these presents forever defend.

Upon condition, that if the said part....of the first part shall and do well and truly pay, or cause to be paid, unto the said part.....of the second part,.....executors, administrators, or assigns, the sum of..... , then these presents and everything herein contained shall cease and be void. And the said part....of the first part, for.....executors, administrators, and assigns, do.....covenant and agree to and with the said part....of the second part, ...executors, administrators, and assigns, to make punctual payment of the money hereby secured..... And in case default shall be made in payment of the said sum above mentioned, or in case the said part....of the second part shall sooner choose to demand the said goods and chattels, it

shall and may be lawful for, and the said part....of the first part do.....hereby authorise and empower the said part....of the second part,.....executors, administrators, and assigns, with the aid and assistance of any person or persons, to enter and come into and upon the dwelling-house and premises of the said part....of the first part, and in such other place or places as the said goods and chattels are or may be held or placed, and take and carry away the said goods and chattels to sell and dispose of the same for the best price they can obtain, at either public or private sale, and out of the money to retain and pay the said sum above mentioned, with the interest and all expenses and charges thereon, rendering the overplus (if any) unto the said part....of the first part,..... executors, administrators, and assigns. And until default be made in the payment of the aforesaid sum of money, the said part....of the first part to remain and continue in quiet and peaceable possession of the said goods and chattels, and the full and free enjoyment of the same, unless the said part....of the second part,.....executors, administrators, or assigns, shall sooner choose to demand the same; and until such demand be made, the possession of the said part....of the first part shall be deemed the possession of an agent or servant, for the sole benefit and advantage of his principal, the said part.... of the second part.

In witness whereof, the said part....of the first part, ha.... hereunto set.....hand....and seal..... this.....day of..... 19.....

Sealed and delivered in the presence of

.....County of.....ss.:

On this.....day of....., 19...., before me came....., to me known to be the person.... described in and who executed the foregoing instrument, and .....acknowledged that....he..... executed the same.

Form of Certificate of Stock

No..... No. of shares.....
Par value of each, $.....

The.....Company:

This is to certify that.....is the owner of..... .....shares of the capital stock of the.....Company, transferable only on the books of the company by the holder thereof, in person or by attorney, on the surrender of this certificate.

In witness whereof, the said company has caused its corporate seal to be affixed, hereto, and this certificate to be signed by its president and treasurer.

....., N. Y.,....., 19.....

.....President.

.....Treasurer.

On back of the certificate a blank transfer, in following form, should be printed.

For value received,.....hereby sell, assign, and transfer unto.....shares of the within-mentioned stock, and do hereby constitute and appoint....., attorney to transfer the same on the books of the company.

Witness my hand and seal, this.....day of....., 19.....

Witness:

....

(SEAL.)

Agreement to sell Shares of Stock of an Incorporated Company

Memorandum of agreement, made this.....day of....., 19...., between A. A., of the city of New Haven, of the first part, and B. B., of the same place, of the second part, witnesseth: That the said A. A. agrees to sell and convey to the said B. B., on or before the 1st day of May next, 1,000 shares of the capital stock of the New Haven Bank, for the price or sum of $110 per share, and to make, execute, and deliver to the said B. B. all assignments, transfers, and conveyances necessary to assure the same to him, his heirs and assigns.

In consideration whereof, the said B. B. agrees to pay unto the said A. A. the price or sum or $110 for each and every share of the said stock so assigned, whenever, and as soon as the said assignment and the scrip of stock so assigned shall be properly executed and delivered to the said B. B.

In witness whereof, the said parties have hereunto set their hands and seals, the day and year first above written.

A. A. (L. S.)

B. B. (L. S.)

Transfer of Stock of Corporation or Bank

Know all men by these presents, that I, C. S.,..... for value received, have bargained, sold, assigned, and transferred, and by these presents do bargain, sell, assign, and transfer unto H. E., sixteen shares of the capital stock, standing in my name on

the books of the.....Exchange Bank, and.....
.....do hereby constitute and appoint the said H. E.,.....
.....my true and lawful attorney, irrevocable, for me and in my name and stead, but to his use, to sell, assign, transfer, and set over all or any part of the said stock, and for that purpose, to make and execute all necessary acts of assignment and transfer, and one or more persons to substitute with like full power, hereby ratifying and confirming all that my said attorney, or his substitute, or substitutes, shall lawfully do by virtue hereof.

In witness whereof, I have hereunto set my hand and seal the.....day of....., 19.....

G. G. (SEAL.)

POWER OF ATTORNEY TO TRANSFER STOCK IN A BANK OR CORPORATION

Know all men by these presents, that....., for value received, ha....bargained, sold, and assigned, and by these presents do bargain, sell, and assign unto....., the following described stock, to-wit:.....unto ....., belonging and held by certificate No..... ...., in.....name, and hereunto annexed, and do hereby constitute and appoint....., true and lawful attorney, irrevocably, for....., and in..... name and stead, to.....use, to assign and transfer the said stock unto.....and for that purpose to make and execute the necessary acts of assignment and transfer, and an attorney, or attorneys under....., for that purpose, to make and substitute, and to do all other lawful acts requisite for effecting the premises, hereby ratifying and confirming the same.

In witness whereof.....have hereunto set..... .....hand....and seal....in the city of....., the .....day of....., in the year of our Lord, 19.....

STATE OF NEW YORK,
City and County of..... ss.:

On the.....day of....., 19...., personally appeared before me....., to me known to be the person....described in, and who executed the within instrument, and acknowledged the execution of the same for the uses and purposes therein mentioned.

Agreement for Keeping Cattle

Agreement made the.....day of....., of....., (hereinafter called the farmer), of the one part, and..... ...., of....., hereinafter called the stockowner of the other part.

Witnesseth as follows:

1. The farmer agrees to take to graze and pasture upon his farm in the town of..... stock and cattle of the stockowner at the following prices, namely, cows, each..... dollars per month; horses, each.....dollars per month; sheep,.....dollars per score per week, corn to be provided by the stockowner.

2. The period for pasturing shall extend from the..... day of.....to the.....day of.....

3. The number of animals at pasture may be varied by the stockowner from time to time, but so that any animal at pasture for part of a week shall be paid for as for a whole week.

4. The amount payable for pasturage shall be paid every fourth week from the date when cattle are first taken in.

5. No animals shall be moved until payment in respect of their pasturage shall have been made. The farmer shall have a general lien upon the whole of the animals for any sum for the time being owing for pasturage, and such lien may be enforced by the sale at auction or private contract of any animal or animals for the time being upon such farm.

6. The farmer shall not be responsible for any loss arising from the restive nature or vice of the animals or other matters over which he has no control, nor for any sickness of the animals. The farmer will give notice of any sickness in the animals as soon as it comes to his knowledge, but the stockowner shall pay all veterinary charges.

Agreement for Sale of a Secret Process of Manufacture

Indenture made the.....day of....., between ....., hereinafter called the vendor, of the one part, and....., of....., hereinafter called the purchaser, of the other part.

Whereas the vendor is the inventor of a secret process for the manufacture of..... (state what), and the purchaser has agreed with him for the sale of such process and the exclusive use thereof for the sum of.....dollars.

Now this indenture witnesseth as follows:

In pursuance of said agreement and the payment of said

sum by the purchaser to the vendor, the latter covenants with the purchaser:

1. To impart the said process to the purchaser and to give him such instructions in regard to the same as may be necessary for using the same effectually.

2. Not at any time to disclose the said secret process and at the request and cost of the purchaser to take all possible steps to prevent said process being used by any other person.

3. To pay to the purchaser for every breach of the foregoing covenant the sum of.....dollars as liquidated damages.

The vendor hereby warrants to the purchaser that he has not at any time disclosed the said secret to any person or done anything whereby the said secret has or is likely to become known to the public.

In witness, etc. (Signatures, and Seal of Vendor.)

Agreement for Service of Farm Laborer

Agreement made this.....day of....., between (farmer), herein called the master, of the one part and..... ....., herein called the servant, of the other part.

It is agreed that the master will employ the servant, and the servant will serve the master, for one year from the..... day of.....as a general farm laborer.

The master will pay the servant.....dollars per week as wages.

If the servant shall be absent from his work at any time without the consent of the master, or shall misconduct himself, the master may forthwith determine the servant's employment, or in case the servant shall leave the master's employment without consent, he shall not receive any further wages.

The master may determine the employment of the servant upon giving him one week's notice, or paying him one week's wages in lieu of notice, in addition to his wages at the rate aforesaid for the time he has actually worked.

In witness, etc. (Signatures of both parties.)

Agreement for Sale of Furniture and Fixtures of a Hotel

Agreement made this.....day of....., between ....., hereinafter called the vendor, and..... .....of....., hereinafter called the purchaser.

1. The said vendor agrees to sell to the said purchaser, who agrees to purchase at the valuation and upon the terms hereinafter mentioned, all the stock, implements, and utensils in trade,

household furniture, fixtures, fittings, and effects specified in the schedule hereunder written, now being in, upon, and about the hotel called "The.....Hotel," its cellars, stores, stabling, outbuildings, yards, and premises, which are now in occupation of the said vendor, situate at, etc.

2. And it is further mutually agreed that the said valuation shall be made on or before the.....day of..... next, up to which time all outgoings in respect of the said hotel and business shall be defrayed by the said vendor, when the amount of such valuation shall be paid to the said vendor, who shall thereupon deliver up to the said purchaser, or his agent, the full and peaceable possession of the said hotel and premises, and also of the said stock in trade, furniture, fixtures, fittings, and effects.

3. It is agreed that the said valuation shall be made by two persons, one to be chosen by each party, or by an umpire to be chosen by such appraiser before entering upon such valuation; and that in case either party shall neglect or fail to make such appointment within.....days from the date hereof, or if either of such valuers or the umpire shall refuse or neglect to proceed and complete such appraisal within.....days, inclusive, next after their appointment, the appraiser of the other of them shall proceed alone therein, and his valuation shall then be binding and conclusive upon both the said parties.

4. In case the said purchaser shall refuse or neglect to pay the amount of such valuation on the said.....day of..... .....next, or if the said vendor shall, upon an offer in writing, of the said purchase money, delivered to or left for him at the said hotel, refuse or neglect to deliver up possession thereof, and of all the said outbuildings and premises, and of the said stock in trade, furniture, fixtures, fittings, and effects, or to deliver over and transfer the licenses relating to the said hotel and premises and the business thereof, then, and in either of such cases, the defaulting party shall forfeit and pay to the other of them the sum of.....dollars as and for liquidated damages between them; and then these presents shall become void. In witness, etc.

Agreement for Sale of Interest of Purchaser in a Contract of Purchase

Agreement made this.....day of....., 19...., between.....of....., hereinafter called the vendor, and.....of....., hereinafter called the purchaser.

1. Whereas by a contract in writing, bearing date the.....

day of....., 19...., the said vendor purchased of ....., at the sum of.....dollars, whereon he paid a deposit of.....dollars, all that freehold estate situate at....., and now in the occupation of.....; and the said vendor has agreed to sell the same to the said purchaser, who hereby agrees to purchase at the sum of.....dollars all his right, benefit, and interest whatsoever of and in the said premises under or by virtue of the said contract:

2. Now these presents witness that, as well in consideration of the sum of.....dollars now paid by the said purchaser to the said vendor, by way of deposit, as also of the agreements on the part of the purchaser hereinafter contained he, the said vendor, hereby further agrees with the said purchaser that, on payment of the residue of the said purchase money as hereinafter mentioned, he will, at the request, costs, and charges of the said purchaser in all things, effectually release and cause to be conveyed as well all his right and interest of and in said premises, under or by virtue of the before recited contract, as also the fee simple of the said premises, free from all charges and incumbrances, unto him, the said purchaser, his heirs or assigns, or as he or they shall direct, the drafts of such conveyance being first approved by the solicitor for him, the said vendor.

3. The said purchaser hereby further agrees that, on taking such conveyance of the said premises as aforesaid, he will duly pay the residue of the said sum of.....dollars to the said original vendor, according to the hereinbefore recited contract; and will duly fulfill the same on the part of the said vendor in all other respects, and pay all costs and expenses whatsoever of, attending and incident to the said purchase, and to such conveyances and assurances as aforesaid.

4. The said purchaser also agrees that he will at his own expense effectually indemnify the said vendor from and against all losses, damages, costs, and expenses whatsoever of and attending the conveyance of the said estate and otherwise in respect thereof; and also from and against all actions and other proceedings whatsoever on account or in respect thereof under or by virtue of the said contract.

5. It is further mutually agreed that if the said recited contract shall not, from any cause whatever, be duly performed, this contract shall become void, and the excess of the deposit money paid by the said purchaser as aforesaid shall be repaid to him by the said vendor, together with all expenses incurred, and all losses and damages sustained by him under or by virtue hereof.

6. For the due performance of this contract each party binds himself unto the other of them in the penal sum of..... dollars, which shall be recoverable as liquidated damages between them under or by virtue hereof.
In witness, etc.

.....
.....

Agreement for the Sale of a Physician's Practice

Agreement made this.....day of....., 19....., between....., hereinafter called the vendor, and ....., hereinafter called the purchaser.

1. Whereas the said vendor has for many years past exercised his profession of physician and surgeon at..... ...., in the County of....., and is now desirous of retiring from his practice at.....aforesaid, and the said purchaser is desirous of establishing himself as a physician and surgeon at said....., now therefore, the said vendor agrees to sell to the said purchaser, who agrees to purchase, the said practice and the good will and benefits thereof from the.....day of..... next, together with all the fixtures, furniture, medical books, surgical and other instruments and apparatus, and all the drugs, medicines, bottles, and other things now used therein, for the sum of..... .....dollars; in confirmation of which purchase the purchaser, upon the execution of these presents, has paid the sum of.....dollars by way of deposit and in part of the purchase money.

2. The said vendor further agrees that, on the payment of the residue of the said purchase money as hereinafter mentioned, he will fully and absolutely deliver over and assign to the said purchaser, his executors, administrators, or assigns, the said practice or business, and the good will thereof, for his and their own absolute use and benefit; and likewise the full and uninterrupted possession of the office in which the said practice is now carried on by him, together with the fixtures, furniture, books, instruments, apparatus, and things now used in and relating to the said practice.

3. The said vendor will introduce and recommend the said purchaser to his patients, friends, and others, as his successor; and will use his best endeavors to promote and increase the prosperity of the said practice or business.

4. The said vendor will not reside or practise either as physician or surgeon, or act directly or indirectly as partner or assistant to or with any other physician or surgeon practicing.....

.....either at.....aforesaid, or elsewhere, within .....miles thereof.

5. The said purchaser, in consideration of the agreements on the part of the vendor hereinbefore contained, hereby further agrees to pay him, his executors, or administrators,..... dollars, by instalments as follows: one-half part thereof on the .....day of.....next, upon receiving the full and peaceable possession of the said practice, office, good will, fixtures, furniture, books, and things hereinbefore mentioned, and the remaining half part thereon on the.....day of .....next.

In witness, etc.

Agreement by a Factor to Sell Goods Abroad

Agreement made this.....day of....., 19...., between.....of....., hereinafter called the principal, and.....of....., hereinafter called the agent.

Whereas said principal is about to ship several cargoes of goods to the port of....., and has entrusted the same to the care of the said agent to sell and dispose of, now it is hereby agreed as follows:

1. That the said agent agrees with the said principal that he will sell and dispose of all such merchandise as the said principal shall consign to him to the best advantage, and for the most money that he can obtain for the same, and will forthwith remit the proceeds of any and all sales to the said principal, or to such other person as he shall from time to time direct subject to the deductions hereinafter expressed.

2. The said agent shall render to said principal just and proper accounts of any and all sales effected by him, and of all sums received and paid by him in respect to such goods, and will keep such accounts in proper books, which shall be deemed the property of the said principal.

3. The said agent agrees not to act for any other person or firm, or to purchase or receive for sale any goods, either in his own name, and for his own account, or in the name or on account of any other person or firm, during the continuance of this agreement.

4. The said principal to allow the said agent to retain out of the proceeds of the sales to be made by him a commission at the rate of.....per cent. on the gross amount of such sales, and also all necessary, customary, or other expenses attending the shipping, unloading, cartage, and freight of said cargoes, or attending the sales thereof.

5. It is mutually agreed that the said principal shall at all times be at liberty, either personally or by agent duly authorised by him, to inspect or carry away all or any part of said goods remaining unsold, wherever the same may then be; and all books of account kept by the said agent as above provided, and all securities, documents, vouchers, and writings held by him relating to his agency; or to make and carry away any copies of or extracts from such books and writings.
In witness, etc.

.....
.....

Agreement Between Merchant and Travelling Salesman

Agreement made this.....day of....., between .....of....., and.....of ....., merchants and co-partners, doing business under the firm name and style of..... & Co., of the one part, and.....of....., travelling salesman of the other part.

1. The said salesman shall enter into the service of said firm as a traveller for them in their business of..... merchants, for the period of.....years from the.....day of.....19...., subject to the general control of said firm.

2. The said salesman shall devote the whole of his time, attention, and energies to the performance of his duties as such salesman, and shall not, either directly or indirectly, alone or in partnership, be connected with or concerned in any other business or pursuit during the said term of..... years.

3. The said salesman shall, subject to the control of the said firm, keep proper books of account, and make due and correct entries of the price of all goods sold, and of all transactions and dealings of and in relation to the said business, and shall serve the said firm diligently and according to his best abilities in all respects.

4. The fixed salary of the said salesman shall be the sum of .....dollars per week for the first year, payable by the said firm weekly from the commencement of the said service, on the.....day of....., and.....dollars per week for the third year, payable weekly in like manner, from the commencement of such respective years.

5. The reasonable travelling expenses and hotel bills of the said salesman, incurred in connection with the business of said firm, shall be paid by the said firm, and the said firm shall from

week to week pay to the said salesman the said travelling expenses and hotel bills in addition to the said fixed salary.
In witness, etc.

.....
.....

Agreement Between Master and Servant

Agreement made this.....day of....., 19...., between.....of....., hereinafter called the master, of the one part, and.....of....., hereinafter called the servant, of the other part.

I, the undersigned master, hereby agree to take the said servant into my service as coachman at the yearly wages of .....dollars, payable monthly; and I, the said servant, declare that I understand and am competent to properly perform the duties of such a situation, and hereby agree to serve the said master honestly, soberly, and faithfully, at all times and in all respects, during my service; and will conform to the hours and rules of his establishment, and conduct myself with decorum and respect towards him, his family, and friends; and not absent myself from such service at any time without his leave; and it is further mutually agreed that such service may be determined at any time by either party on giving the other one month's notice in writing, or on payment by the said master of a month's wages in advance, except in case of unjustifiable misconduct, when the same shall be forfeited absolutely. Dated this.....day of....., 19.....

Another Form

Agreement made between.....of....., employer, and.....of....., laborer.

The said employer hires and employs the said laborer in the said employer's business, in the town of....., in the capacity of a....., and agrees to pay him during the time that he shall remain in such employment..... per week, all upon the terms and conditions of this agreement.

The said laborer does agree to and with the said employer that he will devote his entire time, skill, labor, and attention to said employment, during the time for which he may be so employed, at the wages aforesaid.

It is expressly provided and agreed between the parties hereto that said employer may at any time terminate said employment, at his election, upon payment to said laborer of what may be coming to him, at the rate aforesaid, on the evening of the day

of his actual discharge; the said employer shall be the sole judge of the cause for discharge; and that any agreement or arrangement whereby the said laborer has been heretofore employed by said employer is hereby cancelled, released, and discharged at this date, Signed this.....day of....., 19.....

Agreement Between Employer and Employee to do Piecework

This agreement made this.....day of....., 19...., between.....of....., hereinafter called employer, of the one part, and.....of....., hereinafter called employee, of the other part, witnesseth:

Said employer hires and employs the said employee in the said employer's business, in the town of....., in the capacity of a..... making (or doing),....., and agrees to pay him during the term that he shall remain in such employment,.....per piece, all upon the terms and conditions of this agreement.

Said employee agrees to and with said employer that he will devote his entire time, skill, labor and attention to said employment, during the term for which he may be so employed, working as many hours per day as said employer may direct, that he will finish each piece of work in a careful and workmanlike manner, that he shall receive no pay for the same unless it is completed to the satisfaction of the employer's inspector or foreman, and that, when each piece of work is so finished to the satisfaction of said employer's inspector or foreman, he shall receive the wages aforesaid.

It is expressly provided and agreed between the parties hereto that said employer may at any time terminate said employment, at his election, upon payment to said employee of what may be due him, at the rate aforesaid, on the completion of his last piece of work, on the evening of the day of his actual discharge; that said employer shall be the sole judge of the cause for discharge, and that any agreement or arrangement whereby the said employee has been heretofore employed by said employer is hereby cancelled, released and discharged at this date. In witness, etc.

Agreement Between Adjoining Landowners Relating to an Encroachment

Agreement made this.....day of....., 19...., between.....of....., party of the first

part, and.....of....., party of the second part. Whereas the said party of the first part is the owner of a building situate on the northerly side of..... street, in the said city of....., and the said party of the second part is the owner of a lot of land adjoining thereto on the easterly side thereof; and whereas by mistake a portion of the east wall of said building belonging to said party of the first part encroaches on the land of the said party of the second part; it is now mutually agreed as follows:

1. The said encroachment of the said east wall of the building belonging to the party of the first part shall be deemed to have been made, and the continuance of the same hereafter shall be deemed to be, with the express license and consent of the said party of the second part, to the intent that the said party of the first part shall not require any easement or right in respect thereof.

2. The said party of the first part shall pull down and remove the said wall so far as the same encroaches upon the land of the said party of the second part within.....months after the said party of the second part shall have given to the said party of the first part, or to the owner or occupant for the time being of the said house, a notice in writing in that behalf, and every such notice shall be sufficient if left at the said house, although not addressed to any person by name or description.

3. The respective owners for the time being of the said lots of land shall have the benefit of and be bound by this agreement, and shall be deemed to be included wherever the names of the said parties hereto respectively occur. In witness, etc.

Agreement to Retain Part of Purchase Money Until Removal of Defect in Title

Agreement made this.....day of....., between .....of....., hereinafter called the vendor, and.....of....., hereinafter called the purchaser. Whereas by a contract bearing date the..... day of.....last, the said vendor agreed to sell and the said purchaser agreed to purchase, for the sum of..... dollars, the parcel of land in said contract described; and whereas in the course of investigating the title it is found that there is an undischarged mortgage upon the said premises, and that the amount due upon said mortgage is in dispute so that it cannot be immediately discharged, but the said purchaser has agreed to complete the said purchase immediately, on being allowed to retain the sum of.....dollars out of the purchase money until the said mortgage shall be discharged.

Now these presents witness that, in pursuance of such arrangement, he, the said purchaser, hereby agrees to pay the residue of the said purchase money, and to complete the said purchase, whenever the said vendor shall cause said mortgage to be discharged, and until such time to pay interest on the said sum retained out of the purchase money at the rate of.....per cent. per annum.

And it is hereby mutually agreed that in case the said vendor shall be unable or shall neglect to procure a discharge of said mortgage within.....calendar months from the date hereof, the said sum of.....dollars so retained as aforesaid out of said purchase money shall be absolutely forfeited and shall belong to the said purchaser, who shall be at liberty to retain the same to apply to the payment of said mortgage so far as required and as liquidated damages in respect of the said defect of title; and thereupon the said purchaser shall be no longer liable to pay or account for said sum, but shall be absolutely discharged therefrom; and the said vendor shall be discharged from all obligation to procure a discharge of said mortgage. In witness, etc.

Agreement to Divide the Expenses of a Lawsuit

This agreement made this.....day of..... 19...., between.....of....., ... of.....and.....of....., witnesseth:

Whereas said....., ..., and..... .....are about to commence an action against..... for (here state the grounds of the contemplated action), or

Whereas an action for (here state grounds) has been brought against....., ...and..... by.....

Now, therefore, each and every one of said plaintiffs (or defendants), in consideration of their mutual interests, and the protection thereof, agree among themselves and with each other to pay his full proportionate share of all costs and charges thereof, such share to be governed by the proportion of his respective share or interest in the amount of the judgment recovered by or rendered against said parties.

In witness, etc.

Agreement to Teach School

This agreement made this.....day of....., 19...., between.....of..... herein-

after called the teacher, and....., ... and.....constituting the board of trustees (or school board) of district No....., town of....., county of....., state of....., hereinafter called the board of trustees, witnesseth:

Said teacher, being duly qualified and licensed to teach public school in said county and state, hereby contracts with said board of trustees to teach public school.....of said district for the term of.....consecutive months, commencing....., 19...., in consideration of a monthly salary of.....dollars, payable at the end of each month during the term of said employment. Said board of trustees reserves the right to provide a vacation or vacations of not more than .....weeks in the aggregate during said term, In witness, etc.

Agreement to Pay a Debt Contracted During Infancy

This agreement, made, etc.

Whereas on the.....day of....., 19...., said debtor, being then a minor, purchased of the said creditor a watch, for the sum of.....dollars, and having now attained his majority and being desirous of ratifying the purchase, for the purpose of giving full effect to his liability for the payment of such debt, proposes to enter into the following agreement: Now these presents witnesseth that in consideration of said purchase and the delivery of said watch to him as aforesaid, and of the agreement on the part of said creditor hereinafter contained, he, the said debtor, hereby expressly acknowledges the said debt to be justly due to the said....., and agrees to pay the same within.....months from the date hereof, together with interest thereon at the rate of..... per cent. per annum.

And the said creditor, in consideration of the promise and agreement hereinbefore contained, hereby agrees that he will not sue for or require payment of the said debt unless and until default shall be made in payment thereof at the time hereinbefore appointed. In witness, etc.

Agreement to Revive a Debt Barred by the Statue of Limitations

This agreement, made, etc.

Whereas on the.....day of....., 19...., said debtor purchased of the said creditor a horse for the sum of .....dollars, and.....years having passed since

said purchase and the same being now unpaid, and therefore barred by the statute of limitations, and the debtor being desirous to renew said indebtedness for the purpose of giving full effect to his liability for the payment of such debt, enters into the following agreement:

In consideration of said purchase and the delivery of said horse to him as aforesaid and the forbearance of said creditor to sue for said purchase price before recovery of the same was barred by operation of law, the debtor hereby acknowledges the said debt to be justly due to the said creditor, and agrees to pay the same within.....years from the date hereof, together with interest thereon at the rate of.....per cent. per annum.

And the said creditor, in consideration of the promise and agreement hereinbefore contained, hereby agrees not to sue for or require the payment of said debt unless and until default shall be made in the payment thereof at the time herein appointed.

In witness, etc.

Agreement for the Purchase of a Sewing Machine on the Lease System

I, the undersigned....., of....., residing at number.....on.....street in said town, hereby hire of..... & Co., of....., a sewing machine (description) upon the terms and conditions following:

1. On the sum of.....dollars being paid to..... ..... & Co., in.....installments of.....dollars each, the first installment to be paid on the.....day of .....next, and each subsequent installment at the expiration of each succeeding.....months, the said sewing machine shall without further payment belong to me, the undersigned.

2. In case of default in the punctual payment of any installment, or in case the said sewing machine shall be removed from my said residence without the consent in writing of said..... ..... & Co., or in case I shall become bankrupt, or shall compromise with my creditors, or shall assign, mortgage, or part with the possession of said sewing machine, or in case said sewing machine shall be seized or attached as my property, the installments previously paid shall be forfeited to said..... ..... & Co., who shall thereupon be entitled to resume possession of the said sewing machine, the understanding being that, until full payment of the said sum of.....dollars the said sewing machine shall remain the sole and absolute prop-

erty of..... & Co., and is only lent on hire to the undersigned, who will take all reasonable care of it during the hiring, and in case of damage, by fire or otherwise, will bear the loss or risk. Dated this.....day of....., 19.....

Agreement for the Sale of a Harvest of Wheat

This agreement made this.....day of....., 19...., between.....of....., hereinafter called the seller, and.....of....., hereinafter called the buyer:

In consideration of.....cents per bushel, the seller hereby sells and agrees to deliver to the buyer at his warehouse at .....all the wheat raised and harvested by him on his two farms in.....township, ... county, during the present year. Said wheat is to be delivered at said store in good, clean and merchantable condition, on or before the.....day of....., 19...., and the said buyer agrees to pay for the same immediately upon such delivery. In witness, etc.

Hire-Purchase Agreement of a Carriage

Agreement made this.....day of.....between.....of....., hereinafter called the owner, of the one part, and.....of....., hereinafter called the hirer.

It is agreed as follows: The owner will let and the hirer will take a (victoria) for the term of....., subject to termination as hereinafter provided, at the monthly rent of .....dollars, payable on the.....day of every month, the first payment to be made on the.....day of.....next.

The hirer agrees during the hiring to punctually pay said rent; to keep said carriage in good repair, and to pay all damage to the same by accident, fire or otherwise; to pay taxes for or in respect of the same, and not to part with the custody of the carriage.

If the hirer shall make default in payment as provided, or shall be adjudged a bankrupt, or shall have any execution levied on his goods, or suffer any act which may prejudice the owner's rights, or fail to observe the stipulations herein contained the owner may resume possession of the carriage, and for that purpose may enter the premises occupied by the hirer.

The hirer may at any time terminate the hiring by returning the carriage to the owner.

If the hiring shall continue for the period of..... and the hirer shall desire to purchase the carriage, the owner will sell the same to him for the sum of.....dollars in addition to the aforesaid monthly payments, and will transfer the property in the carriage, but until such payment the same shall remain the exclusive property of the owner. In witness, etc.

(Signatures of both parties.)

Agreement for the Adoption of Children

This indenture made the.....day of....., 19...., between.....of....., party of the first part, and.....,of.....,and..... his wife, parties of the second part.

Whereas the said party of the first part has two daughters, ...and....., now aged.....and .....years, respectively; and whereas the said parties of the second part are willing to adopt the said children subject to the conditions hereinafter contained, and on the part of the party of the first part to be observed: Now this indenture witnesseth that the said parties covenant and agree as follows, that is to say:

1. The said parties of the second part shall adopt the said children, and shall, until the said children shall respectively attain the age of twenty-one years, or marry under that age, maintain, board, lodge, clothe, and educate them in a manner suitable to their station, and as if they were the lawful children of the parties of the second part and shall at the cost of the parties of the second part, and of the survivor of them, provide the said children with all necessaries, and discharge all the debts and liabilities which the said children or either of them may incur for necessaries, and indemnify the said party of the first part against all actions, claims, and demands in respect thereof.

2. The said party of the first part hereby nominates and appoints the said parties of the second part, during their lives, and after their respective deaths the person or persons to be nominated in that behalf, as is hereinafter mentioned, to be the guardians of the persons and estates of the said children until they shall attain the age of twenty-one years, or until they shall marry under that age respectively.

3. The said party of the first part shall not revoke the appointment hereby expressed to be made, and will not, by deed, will, or otherwise, appoint or apply for the appointment of any other person or persons to be guardian or guardians of the said children or either of them, or of their respective estates.

4. In case of the death of either of the parties of the second

part before the said children shall attain the age of twenty-one years, or marry under that age respectively, it shall be lawful for the survivor of them, the said parties of the second part, by deed or will, to nominate and appoint any person or persons, from and after the decease of such survivor, to be guardian or guardians of the said children or either of them.

5. The said party of the first part shall not himself, nor shall any person or persons claiming under him, or acting under his authority, at any time or in any manner interfere with the training or management of the said children or either of them, or with their or her moral, intellectual, or religious education or instruction.

6. If the said party of the first part shall not perform and observe all and every of the stipulations herein contained and on his part to be performed and observed, then and in every such case it shall be lawful for the said parties of the second part, and the survivor of them, by notice in writing under their, his or her hands or hand, and addressed either to the party of the first part or to the person setting up such claim or demand, or so interfering as aforesaid, to put an end to the agreement hereby expressed to be made, and thereupon the same shall absolutely cease and determine; provided that in such event the said party of the first part, or his estate, shall be liable to pay and satisfy all debts and liabilities incurred by or in any wise for the benefit of the said children, or either of them, which at the time of such determination of this agreement shall not have been paid and satisfied. In witness, etc.

Agreement to Indemnify Corporation on Issue of New Share Certificate in Place of one Lost or Destroyed

Whereas, the.....company delivered to..... ..... a certificate of.....shares of stock in said company, of which shares he is the owner, and the said..... has represented to said company and now declares that the said certificate has been mislaid, lost or destroyed, and has applied to the said company to give him another certificate, which the said company has consented to do upon receiving the indemnity hereinafter contained in which....., as surety, has agreed to join:

Now, therefore, the said.....(shareholder), and surety, do hereby jointly and severally agree to save harmless and indemnify the said company from and against all claims and demands in respect of the said original certificate; and from and against all damages, losses, costs, charges and expenses

which said company may sustain, incur or be liable for, or in consequence of any such claims or demands, or of its having given to said shareholder a second certificate as aforesaid.

In witness, etc. (Signature of shareholder and surety.)

Release by a Ward on Coming of Age, to his Guardian

Know all men by these presents, that I, A. B., of....., son and heir of....., deceased, in consideration of ....., by these presents remise, release, and forever discharge Y. Z., of....., my guardian, of and from all manner of actions, suits, accounts, debts, dues, and demands whatsoever, which I ever had, now have, or which I or my executors or administrators, at any time hereafter, can or may have, claim or demand against the said Y. Z., his executors or administrators, for, touching, or concerning the management and disposition of any of the lands, tenements, or hereditaments of the said A. B., situate, etc., or any part thereof, or for or by reason of any money, rents, or other profits by him received out of the same, or any payments made thereof, during the minority of the said A. B., or by reason of any matter, cause or thing whatsoever, from the beginning of the world to the day of the date hereof.

In witness whereof, I have hereunto set my hand and seal, this.....day of....., one thousand eight hundred and.....

(Signature and seal)

.....

In presence of

(Signature of witness.)

.....

.....

Release by One Partner

In consideration of the sum of one dollar to me in hand paid by Y. Z., of....., I do, on behalf of the firm of A. P. & Co., of....., hereby release, quitclaim, and forever discharge the said Y. Z., of and from all the debts, dues, claims, and demands, which the said firm of A. P. & Co., have against the said Y. Z.

(Signature and seal.)

(Date)

Release by Creditor of One Partner

Whereas, the late copartnership firm of S. & G., composed of J. S. and H. G., heretofore conducting business at....., are indebted to me, the undersigend G. C., in the sum of..... dollars, by virtue of a judgment recovered in the..... court, in the....., on the.....day of....., 19...., in an action wherein said G. C. was the plaintiff, and the said J. S. and H. G., composing the late firm of S. & G. were defendants; and,

Whereas, such firm has been dissolved; and,

Whereas, I have agreed with H. G., a member of the said firm, to compound or compromise my claim on him individually, in respect of the said indebtedness to me of the said firm, for the sum of.....dollars:

Now, know Ye, that in consideration of the sum of..... dollars to me, the said G. C., paid by the said H. G., at or before the time of subscribing this release, and for other good and valuable considerations to me moving, I, the said G. C., do hereby, according to the statute in such case made, release, acquit, and forever discharge the said H. G. and his estate, of and from all individual liability, claim, and demand whatsoever, for or in respect of the said indebtedness to me, of the said late firm.

Provided, However, that this present release is made pursuant to an act, entitled....., passed....., and shall have no greater or other effect than as by the said act and by this release is provided.

Witness my hand, this.....day of..... ,19...., etc.

Release of One of Several Partners or Joint Debtors

Whereas, the late copartnership firm of Y. Z. & Co., of..... ....., are indebted to me, the undersigned A. B., of the city of....., in the sum of.....dollars (and if the indebtedness is on a judgment of a court of record of this state, add words to this effect, by virtue of a judgment recovered in the supreme court of the state of....., in an action wherein said A. B. was the plaintiff, and the said late firm were defendant.) And,

Whereas, such firm has been dissolved; and,

Whereas, I have agreed with Y. Z., a member of the said firm, to compound or compromise my claim on him individually in respect of the said indebtedness to me of the said firm, for the sum of.....dollars:

Now know Ye, that in consideration of the sum of..... dollars to me, the said A. B., paid by the said Y. Z., at or before the time of subscribing this release, I, the said A. B., do hereby, according to the statute in such case made, release, acquit, and forever discharge, the said Y. Z., and his estate of and from all individual liability, claim, and demand whatsoever, for, or in respect of the said indebtedness to me of the said late firm: Provided, However, that this present release is made pursuant to (an act, entitled "An Act, etc.," passed .....), and shall have no greater or other effect than as by the said act and by this release is provided.

Witness my hand, this.....day of....., 19.....

(Signature and seal.)

Release of Lands from the Lien of a Judgment

(Title of the cause.)

Judgment for.....dollars damages and costs. Judgment-roll filed, and judgment docketed on the.....day of ....., 19...., in the office of the clerk of.....

In Consideration of.....dollars to me in hand paid, I do hereby release and discharge the lands and premises hereafter described, from all claim, interest, and lien which I may have by virtue of the above-mentioned judgment, and any proceedings thereupon. (Description.)

Witness my hand and seal, this.....day of....., 19.....

(Acknowledgment.)

1. Wills and Special Clauses

Short Form

The will of A. B., of....., (merchant).

I give, devise, and bequeath all my property, both real and personal, to C. D. (revoking all former wills).

I appoint E. F. the executor of this will.

(Date.) (Signature.)

(Signature of witness.)

A Will Bequeathing Several Legacies, and Appointing a Residuary Legatee

I, A. B., of....., declare this to be my last will and testament.

I bequeath to my wife, C. B., all the fixtures, prints, books, plate, linen, china, wines, liquors, provisions, household goods, furniture, chattels, and effects (other than money or securities for money), which shall at my death be in or about my dwelling-house and premises at.....

I bequeath to my said wife the sum of.....dollars, to be paid to her within one month after my death, without interest.

I also give and bequeath to my said wife the sum of..... .....dollars.

I also bequeath the following legacies to the several persons hereafter named: To my nephew, E. F., the sum of..... dollars; to my cousin, G. H., the sum of.....dollars; and to my friend, J. K., the sum of.....dollars (and so on with other pecuniary legacies).

I also bequeath to each of my domestic servants who shall be living with me at the time of my death in the capacity of (state the description of servants to whom the legacies are to be given), one year's wages, in addition to what may be due to them at that time.

All the rest, residue and remainder of my real and personal estate, I devise and bequeath to R. S., his heirs, executors, administrators, and assigns, absolutely forever.

I appoint T. U. and V. W. executors of this my will.

In witness, etc.

A Will of Real and Personal Estate

I, A. B., of the town of....., in the county of ....., and state of....., (merchant), declare this to be my last will and testament:

I give and bequeath to my wife, C. B.,.....dollars, to be received by her in lieu of dower.

To my son, E. B.,.....dollars (which said several legacies I direct to be paid within.....after my decease).

I give and devise to my son, E. B. aforesaid, his heirs and assigns, all (here designate the property), together with all the hereditaments and appurtenances thereunto belonging or in anywise appertaining.

To have and to hold the premises above described to the said E. B., his heirs and assigns forever.

I give and devise all the rest, residue, and remainder of my real property, of every name and nature whatsoever, to my said daughter, M. B. (and my daughter, O. B., to be divided equally between them, share and share alike).

I give and bequeath all the rest, residue and remainder of my personal property, of what nature or kind soever, to my said wife, C. B.

I hereby appoint E. B. the sole executor of this will, revoking all former wills by me made.

In witness (etc., as in Form 1452).

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